

In the Supreme Court of the United States

OCTOBER TERM, 1984

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
AFL-CIO, ET AL., RESPONDENTS

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

JOINT APPENDIX

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In the Supreme Court of the United States

OCTOBER TERM, 1984

No. 84-861

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
AFL-CIO, ET AL., RESPONDENTS

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

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- April 7, 1980—Decision and Recommended Order of the Administrative Law Judge in *Custom Brokers*
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- December 19, 1980—Unfair Labor Practice Charges filed in Case Nos. 22-CE-44 through 22-CE-46 and 22-C-806 through 22-CC-808 (*American Trucking Associations, Inc.*)
- January 19, 1981—National Labor Relations Board Order Consolidating Proceedings and Remanding to Administrative Law Judge Harmatz for Further Hearings
- February 10, 1981—Order Consolidating Cases, First Amended Complaint and Notice of Hearing in 22-CE-44 through 22-CE-48 and 22-CC-806 through 22-CC-810

April 7, 1981—Hearing Before Administrative Law Judge Harmatz

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February 28, 1983—Decision and Supplemental Decision and Order of the National Labor Relations Board, Pet. App. 35a-64a

May 9, 1984—Opinion and Order of the United States Court of Appeals for the Fourth Circuit, Pet. App. 1a-30a

July 31, 1984—Order of the United States Court of Appeals for the Fourth Circuit denying petitions for rehearing and suggestions for rehearing *en banc*

January 21, 1984—Order of the Supreme Court of the United States granting petition for writ of certiorari in No. 84-861

**EXCERPTS FROM JOINT APPENDIX (5 VOLUMES)
FILED WITH U.S. COURT OF APPEALS FOR THE
FOURTH CIRCUIT**

12-6-80

AGREEMENT BETWEEN MANAGEMENT AND ILA

1. Parties agree that the Rules on Containers will be placed in effect on January 1, 1981 in all ports from Maine to Texas, except in Philadelphia where an application for reconsideration will be made promptly.

2. In the event an injunction is issued in any port where the Rules have been placed in effect, or the Petition for Reconsideration in Philadelphia is denied, the ILA shall have the right to give the 60 day notice provided in paragraph 8 of the Containerization Agreement.

3. Any carrier who diverts cargo from one port to another to avoid the Rules shall, in addition to any other penalties, pay liquidated damages of \$500 per container to the Pension Fund and \$500 per container to the Welfare Fund.

4. The parties agree that counsel shall prepare an assessment agreement whose purpose shall be to encourage the stuffing and stripping of containers at on-pier facilities by reducing pier costs and improving productivity with the cost of such program to be borne by containerized automated cargo which would have been stuffed or stripped on pier if the Rules were in effect. Such program is to be an amendment to JSP, is to be submitted within 30 days of this date and is to be in operation only in the event the Rules are unenforceable.

NEW YORK SHIPPING
ASSOCIATION, INC.

By: /s/ James J. Dickman
President

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, AFL-CIO

By: /s/ Thomas W. Gleason
President

COUNCIL OF NORTH ATLANTIC
SHIPPING ASSOCIATIONS

By: /s/ Illegible
President

/s/ Thomas P. Kelly
Secretary

WEST GULF MARITIME
ASSOCIATION

By: /s/ Illegible
President

SOUTHEAST FLORIDA EMPLOYERS
ASSOCIATION

By: /s/ Illegible
President

MOBILE STEAMSHIP ASSOCIATION,
INC.

By:
Administrative Chairman

Dated: Bal Harbour, Florida
December 6, 1980

ATLANTIC COAST DISTRICT,
I.L.A., AFL-CIO

By: /s/ Illegible
President

Walter L. Sullivan
Secretary

SOUTH ATLANTIC AND GULF
COAST DISTRICT, I.L.A.,
AFL-CIO

By: /s/ J. H. Raspberry
President

/s/ Illegible
Secretary

AFFIDAVIT

COMMONWEALTH OF VIRGINIA
CITY OF CHESAPEAKE

I, James R. Clark, Jr., being first duly sworn state the following of my own personal knowledge and belief.

I am the Terminal Manager of Wilson Trucking Corporation's truck terminal located at 1128 Cutlas Road, Norfolk, Virginia. I have been Terminal Manager for approximately three years. Prior to this, I was employed by the Company as Terminal Manager at a terminal located in Lynchburg, Virginia. I have worked for the Company for four years.

Wilson operates two facilities from which it serves the Port of Hampton Roads. One is the Cutlas Road facility, the other is located in Hampton, Virginia. The Newington facility serves the Baltimore Port. The Company operates a long-haul freight transportation business. It has operating authority in five states.

The Norfolk facility consists of two buildings, one housing a shop in which Wilson's equipment is serviced to keep it roadworthy. The second building houses an office area and a large cargo storage area. There are approximately forty-five doors to which trucks can back up and unload or load cargo. Covered loading docks, the height of the tailgate of the truck, facilitate this loading and unloading. A diagram of this facility is attached as Exhibit A.

The Hampton facility is similar in structure to the Norfolk facility, although much smaller. The facility has only twenty loading dock doors.

Wilson employs approximately 110 employees at its Norfolk facility. These employees are not represented by a union.

In 1979, Wilson hauled 9,277 metric tons of containerized import general cargo from the Port of Hampton Roads. This amount constituted eighty percent of all im-

port general cargo hauled by the Company from the pier. One hundred percent of the containers were full shippers' loads, containers filled with the goods of one shipper. Of these import containers, we stripped about eighty-four, or around ten percent, at our Norfolk facility.

In 1979, ninety and one-half percent of the general cargo hauled to the pier for export was containerized. Almost all of these containers were full shippers' loads. Of these, fourteen were stuffed by the Company at its Norfolk facility.

With reference to import containers, Wilson strips full shippers' loads for various reasons. Wilson will in most cases not deliver twenty-foot containers to non-local consignees. It will instead strip the container and consolidate the cargo with cargo destined to the same location. Wilson would also strip the container to enable it to handle backhauls filling conventional motor carrier equipment. Many times Wilson discovers after it has hauled the containers to its facility that the container is not safe for over-the-road transport. Lock downs might break, break linings might be cracked or the brake slack adjusters might not be working properly. Wilson would strip the containers and load it into its own equipment.

With respect to export cargo, Wilson would stuff containers for both convenience and as a service selected by a customer. In the event of late availability of a container, the customer will ask Wilson to pick up export cargo at the customer's facility and stuff it into containers at Wilson's terminal. In the event of an emergency shipment when time permits delivery of a container to the customer's facility, the customer again will ask Wilson to simply deliver the cargo to Wilson's port facility, stuff a container and ship it. Wilson will also stuff containers for convenience where, for instance, a customer has a shipment to be stuffed into two twenty-foot containers. Rather than delivering ten "twenty footers" to the customer's facility and transporting them to the pier, Wilson will haul the cargo in five motor carrier trailers

to its facility, stuff the ten containers and deliver them to the pier.

The work of Wilson's employees has not changed with containerization. Our employees load and unload containers using the same methods and equipment used to load and unload truck trailers. Much, if not all, of the cargo now unloaded from containers would previously have been unloaded from truck trailers.

The terminal operators could not perform the stripping and stuffing work which would be required by enforcement of the Rules on Containers. Their facilities are obsolete and have insufficient space to accommodate this amount of cargo.

Further, I sayeth not.

/s/ James R. Clark, Jr.
JAMES R. CLARK, JR.

AFFIDAVIT

COMMONWEALTH OF VIRGINIA
CITY OF CHESAPEAKE

I, John H. Everett, being first duly sworn and cautioned state the following of my own personal knowledge and belief.

I am President of Everett Express, Inc. I have held this position for thirty-four years. In my capacity as President, I oversee all sales contracts and the general operations of the company. I have exercised this authority since the company was formed in 1946.

Everett Express operates a long haul and local cartage freight transportation operation. Our facility in Chesapeake, Virginia is located at 3153 South Military Highway. The company also operates facilities at Highway 258 in North Tarboro, North Carolina and in Moorehead City, North Carolina. The company operates a fourth terminal in Richmond, Virginia. None of these four facilities serve as storage or warehouse space. The company garages its vehicles at these facilities. The company uses fork lift trucks, dollies, and pinch bars to load and unload truck trailers and containers. The company employs approximately sixty employees at its four locations. None of these employees are represented by a labor organization.

Prior to the advent of the modern container, Everett Express would pick up import break bulk cargo at the Hampton Roads Port. This cargo was destined to local consignees as well as consignees in other states. I.L.A. labor would load this cargo into the company's truck trailers at the pier. When the cargo picked up did not fill the truck trailer, it would be hauled to the company's local terminal and there consolidated with other cargo destined to consignees in the same area. Although cargo shipped from one shipper, destined to one consignee, and filling a truck trailer would be hauled from the pier to

the truck terminal, this cargo would not be unloaded at the company's facilities.

Between the years 1946 and approximately 1953, the company also handled consolidated less-than-trailer loads. These loads would be returned to Everett's facility where the cargo would be offloaded from the truck trailer and reloaded into designated trailers for delivery to the ultimate consignee. The company ceased handling these consolidated loads around 1953. Since that time Everett has handled only cargo shipped by one shipper and destined to one consignee.

With respect to export cargo our company would haul its customer's goods from the customer's facility to our pier area truck terminal where the cargo would then be delivered by a local or city driver. When the customer's cargo did not fill a conventional truck trailer the company would, if possible, consolidate that cargo with other shipments originating in the customer's geographic area for delivery to our terminal.

With the advent of the modern container Everett continued to do exactly the same work as it had done prior to containerization. Containers typically do not haul cargo sufficient to fill up conventional motor carrier trailers. Thus, on the import side, Everett would not haul containers intact to the consignee's location unless instructed to do so by the consignee. The container would be picked up at the pier by a local driver and delivered to Everett's terminal. The company would there strip the container of its cargo and consolidate that cargo with other cargo destined to the same geographic area. The cargo would then be delivered by an over-the-road driver. In addition to the problem with the cargo capacity of a container, containers were stripped because often they were not compatible with our equipment. Because the container could not be properly hooked up to the cabs of our trucks, they could not safely be hauled over the road. Such haulage would also result in damage to Everett's equipment because of the incompatibility of the sea carrier's contain-

er's fifth wheel pin setting with our equipment. Often, containers would be loaded beyond the permissible limits of the state highway weight requirements. For this reason also the company would strip the containers at its pier area terminal before delivering the cargo to the consignee.

Everett will not strip a container without permission of the consignee. Because upon breaking the seal of a container the carrier is liable for deficiencies in the amount of all damage to the cargo, Everett would not break the seal on containers without the customer's authorization. If the customer did not authorize stripping, however, a different rate would be charged for delivery of the cargo. Because of the various reasons above stated for stripping containers, Everett was forced to encourage its customers to give this authorization. In 1979 Everett handled approximately 1,500 imported containers. Of these containers, approximately ten to fifteen percent were stripped at Everett's pier area facility. Those containers which were not stripped were either hauled intact according to the customer's instruction or because Everett could not arrange to deliver other cargo to the same area.

With respect to export cargo, after containerization almost all of Everett's customers stuffed their cargo into containers at their own facilities. Everett would simply haul the containers from the customer's location to its truck terminal in the port area where a city driver would be dispatched to deliver the container to the pier. The company did not stuff any of the export containers at its facility. The loading and unloading work previously performed by its employees on export cargo has been eliminated by containerization. In 1979, Everett handled between 3,500 and 4,000 export containers. It stuffed none of these at its port area facility.

Enforcement of the rules would not result in additional stripping and stuffing work for I.L.A. members. Although Everett Express could no longer strip and stuff

imported containers at its port area facility, customers would choose to pay the additional charge of having these containers hauled intact to their facilities rather than having the containers stripped at the pier by I.L.A. labor. The delays, damage, and pilferage to cargo characteristics of pier break bulk handling would result in customers instructing motor carriers to deliver containers intact. Enforcement of the rules would not affect our operation with respect to export containerized cargo. Containerization eliminated export loading and unloading work for both I.L.A. workers and our employees.

If the rules were enforced, the seaport terminals would not have the capacity to perform the stripping and stuffing work now performed by motor carriers such as Everett Express. The piers have insufficient warehousing space to accommodate the volume of cargo which would result from enforcement. The piers have simply not been and could not be developed to handle this amount of break bulk work.

Further I saith not.

/s/ John H. Everett
JOHN H. EVERETT

STATE OF NEW JERSEY)
) ss:
 COUNTY OF ESSEX)

I, ROBERT W. HAGEMANN, business address, 860 North Avenue, Elizabeth, New Jersey, 07201, after first being duly sworn state the following of my own personal knowledge:

1. I am employed by Jayne's Motor Freight, Inc. (Jaynes). My position with Jayne's is Vice-President Traffic. I have worked for Jayne's since approximately November 1969, and have held my current position for about 1 year. Prior to being Vice President, I was employed by Jayne's as Traffic Manager.

2. As Vice President, I am responsible for sales and traffic. My sales duties include the solicitation of small shipments from prospective customers for consolidation into full truck and container loads. My traffic duties include rate-making, pricing and dealing with regulatory agencies. I am involved in the governing of the company and am a member of the executive committee. I am also involved directly in the day-to-day supervision of employees.

3. Jayne's has been in existence since shortly after World War II, possibly 1946. It is a New Jersey corporation and operates facilities at Elizabeth, New Jersey and Red Lion (Vincentown), New Jersey. The Elizabeth facility is located within two miles of the Port of Newark and within twelve of the Port of New York. The Red Lion facility is located outside of the Ports of New York and Newark but within 50 miles of the Port of Philadelphia. The Elizabeth operation has existed since around 1946, and has gradually enlarged. The Red Lion location has been in operation since 1970.

4. The facility at Elizabeth consists of four separate buildings, an office, a terminal, a maintenance building and a warehouse. These buildings occupy approximately six acres. The terminal is "L" shaped, with a freight

dock attached to the building. The dock floor is elevated to the height of a tractor trailer truck bed. The dock is covered, and is about 50 feet wide and about 400 feet long. It has sixty-nine, eight foot wide doors. Trailer trucks and containers are backed up to these doors for loading and unloading. We have approximately 18,000 square feet of space in the Elizabeth terminal.

5. The warehouse at Elizabeth is two buildings with one common wall. One has approximately 10,000 square feet of covered storage space. The other has approximately 3,000 square feet of covered storage space. There is a concrete apron adjoining the buildings which serves as a loading dock. Adjacent to the concrete apron is a slanted "back-in" with room for three trucks. The back-in dips so that when backed in a truck's tailgate is at the height of the apron. The concrete apron is necessary for loading and unloading steel. This work requires more support than would the loading and unloading of other types of cargo. Unlike the terminal's dock, however, it is not covered.

6. The Elizabeth office houses the dispatch operations, computer and accounting work and general administration. The Elizabeth maintenance building has room for four trailers to pull through. It has a small office and a section for parts. It houses equipment such as overhead cranes, jacks, air compressors and a forklift. Repair work on trucks and trailers is performed in this area.

7. The Red Lion facilities are smaller than those at Elizabeth. They consist of a single building with approximately 20,000 square feet of covered storage space. Attached to this warehouse area is a ramp which allows a truck trailer to actually be brought inside the building. Separated by a wall from this warehouse area is a dock area. The dock area is approximately 100 feet wide by 100 feet long. There is an elevated dock similar to that at Elizabeth which has approximately 20 doors. There is also a two bay garage for repair work, and an office in the same building. Jayne's owns 50 acres at this location.

8. Attached as Exhibit A are photographs of the Elizabeth facility. Photos A-1 and A-2 picture the warehouse. The concrete apron and back-in are illustrated. In A-1 two trucks are backed up to the apron. Photos A-3 through A-7 illustrate the terminal. The pictures show various trucks backed up to the tailgate level doors and loading dock. Photos A-8 and A-9 show the Elizabeth office. The terminal can be seen in the background of A-9.

9. Attached as Exhibit B are reproductions of photographs of the Red Lion facility. B-1 shows a front view of the Red Lion building. B-2 shows various views of the sides of the terminal and, in the photo in the upper left corner, the entrance to the maintenance area.

10. Jayne's is a short-haul, Class II cartage carrier. It is licensed by the ICC to operate in areas of Pennsylvania, Delaware, New Jersey, New York and Connecticut. The company's formal certificate of operating authority is attached as Exhibit C. As a short-haul operator prior to the advent of the modern (8' x 8' x 20' or 40') container, Jayne's made pickups and deliveries within the area of its operating authority. Customers would arrange for Jayne's to pick up cargo at their facilities and deliver it to the designated consignee. Jayne's also made pickup's and deliveries to and from the pier. At the pier, Jayne's driver would move export cargo to his truck tailgate, where a member of the ILA would move it to the pier. Conversely the Jayne's driver would move import cargo from the truck tailgate into the truck. In addition to its conventional pickup and delivery service, Jayne's has always offered a range of alternative services.

11. Since the early days of Jayne's operation, beginning more than 30 years ago, Jayne's has operated "pool truck" services. Private motor carriers leave fully loaded truck trailers at our facility for deconsolidation. On other occasions importers would arrange with Jayne's to pick up full truckloads of import cargo at the pier or receive such truckloads at its facility. Our employees would un-

load the truckloads and either store it for subsequent distribution or immediately deliver it to locations designated by our customer.

12. Conversely, Jayne's has also consolidated small shipments at its truck terminal for transport as full truck loads. These small shipments are picked up by Jayne's at locations designated by its customer, or would simply be delivered to Jayne's by another carrier. When a full load accumulates the cargo is delivered either by a Jayne's driver or another carrier. One example of such an operation involves a clothing manufacturer which would have Jayne's consolidate small shipments of belts, buttons, etc. into one truckload for delivery by the manufacturer to the manufacturer's facility. This consolidation work was not performed in connection with export cargo prior to the advent of the modern container.

13. The pool truck and assembling services often are performed in conjunction with one another. A manufacturer leaves a fully loaded truck trailer at the Jayne's terminal when its carrier picks up the load Jayne's has consolidated. Jayne's deconsolidates and distributes the contents of the trailer left with it and consolidates new shipments into the trailer. The trailer is then exchanged with another trailer delivered to Jayne's from the manufacturer. The process can continue indefinitely.

15. As indicated, warehousing has always been used in conjunction with the truck pool and consolidation services. Cargo often has to accumulate before being shipped as a full truckload. With the deconsolidation and distribution service, Jayne's is often instructed to distribute only part of a shipment and to store the balance of the cargo pending further instructions. However, ninety percent of the cargo brought to our facilities is distributed immediately. An extremely small percentage of our cargo is held for more than thirty days.

16. Excluding office and administrative personnel, Jayne's employs 51 employees at the Elizabeth facility and is at its Red Lion facility. These employees are rep-

resented by the International Brotherhood of Teamsters in the job classifications of dockmen and drivers. Dockmen use hand trucks, four wheeled carts and forklift trucks to load and unload cargo. Dockmen palletize cargo, as well as break apart, sort and label cargo previously palletized at manufacturers' facilities. Probably 90% of the general cargo we handle must be handled by hand during some phase of the loading and unloading process. The equipment used by Jayne's employees includes forklift trucks, hand carts and dollies.

17. The advent of containerization has not caused any basic changes in the methods we use to handle freight, in the freight-handling equipment or in the physical construction of our facilities. Our business remains basically unchanged. Jayne's still makes pickups and deliveries within the area of its operating authority. Jayne's still performs the pool truck service, deconsolidating loads for storage or immediate distribution. Jayne's also continues to haul import cargo to its terminal for storage and/or distribution. For several years some of this cargo has come to the port in containers. Jayne's hauls the containers to its terminal, where its employees unload the cargo for storage and/or distribution. Jayne's continues to consolidate domestic shipments. With containerization, however, Jayne's has also begun consolidating shipments into containers for export. Much of the export consolidation work performed by Jayne's is done in conjunction with San Juan Freight Forwarders, a non-vessel operating common carrier (NVOCC).

18. Basically, an NVOCC consolidates less-than-containerload (LCL) cargo in full containers which are subsequently tendered to vessel operating common carriers (VOCC's) for ocean transportation. In conjunction with San Juan, Jayne's provides motor transportation of goods overland from and to port areas, assembles and consolidates small shipments into larger containerloads, expedites transportation of small shipments, and furnishes tracing of shipments.

19. As required by the FMC, San Juan has filed a tariff with the FMC covering the details of service Jayne's and San Juan offer. The tariff includes various rules, regulations, and rates San Juan may charge in conjunction with the NVOCC services we offer. Our shippers/customers may be manufacturers, retailers or other businesses. Almost all of the business that Jayne's performs in conjunction with San Juan is for export. Other than perhaps recommending our services as a consolidator to some customer, steamship lines never directly contract for our services as a consolidator/shipper. With virtually no exceptions, our customers contact us directly. As an NVOCC, San Juan agrees with shippers to provide for the movement of the cargo from the shippers' facility to the designated consignee in Puerto Rico. San Juan contracts with a VOCC for the sea carriage of full consolidated containers under VOCC tariffs provisions calling for the direct movement of these containers without unloading at the pier.

20. Jayne's role in the Puerto Rican freight movement is as follows. Jayne's picks up less than full load shipments from various locations within its operating authority and transports these shipments to its Elizabeth terminal. Occasionally, small shipments are first taken to the Red Lion facility where they are consolidated into truck trailers with other cargo coming to the Elizabeth terminal, and then are transported to the Elizabeth terminal by a Jayne's driver. Jayne's employees load the export freight into containers at the Elizabeth terminal. The containers are transported to the pier. Usually a carrier other than Jayne's transports the container from the Elizabeth terminal to the pier. On occasion, however, Jayne's has performed this work. Jayne's sales force actively seeks the less-than-trailerload traffic destined for Puerto Rico. It is a profitable portion of Jayne's business and is a service not offered by many of Jayne's competitors. In addition, through our contact with the customer with respect to its less-than-trailerload Puerto Rico ship-

equipment. Therefore, if the Rules on Containers were enforced to prevent stripping of containers within 50 miles where the cargo was not warehoused for longer than 30 days, and this prevented us from stripping containers at our terminal for reloading into Overnite equipment, we would simply pick these containers up at the seaport terminals and haul them beyond the 50 miles limit to the premises of the consignee. Naturally, we would only haul such containers which would be safely hauled over the road. We would pick up and haul no 20' containers, because they are much more unsafe due to weight and load distribution, and uneconomical due to the low volume capable of being hauled in them.

In other words, the Rules on Containers would force us to stop handling 20' containers all together, and stop stripping 40' containers at our Norfolk terminal. However, we would continue to haul 40' containers at reasonable distances beyond the 50 mile limit without stripping them. Most other motor carriers would do the same. Under such circumstances, the Rules on Containers would not generate any more stripping of container work for I.L.A. labor on the piers.

The Rules on Containers would, of course, have adverse economic effect on our company, since we would be able to use less of our own equipment. In addition, this action would increase our cost of rental charges on containers. It would also cause a reduction in the number of local drivers and possibly the number of dock workers. We would also haul less total cargo, which could further reduce our work force.

Further, I saith not.

THIS 9th day of October, 1980.

/s/ D. D. Moore
DONALD D. MOORE
Terminal Manager
OVERNITE TRANSPORTATION
COMPANY

AFFIDAVIT

COMMONWEALTH OF VIRGINIA

CITY OF CHESAPEAKE

I, Eric T. Nielsen, 1904 Jack Frost Road, Virginia Beach, Virginia, after having been sworn state of my own knowledge and belief the following.

I have been Terminal Manager of Thurston Motor Lines, Inc., 400 Freeman Avenue, Chesapeake, Virginia 23324, from 1963 to 1968, when I went with Maislin Transport in Norfolk, Virginia for twelve years, after which I became Terminal Manager again for Thurston Motor Lines about September, 1979.

Thurston is a non-union line haul motor carrier, having operating authority in most of the Southern and East Coast states. Our Chesapeake terminal is a typical freight terminal, where we warehouse no cargo. Thurston picks up cargo from seaport terminals in the Hampton Roads Port and typically delivers it long distance from the port area. We shun short haul delivery, deliveries within one hundred miles of the port. We make no local deliveries of cargo picked up at the seaport. We handle export cargo in the same manner as import cargo.

In 1979 approximately thirty per cent of the gross volume of cargo we hauled to and from our Chesapeake terminal was in intermodal containers. During this period, we picked up from the seaport terminals approximately 1,100 containers filled with cargo from one shipper and consigned to one consignee. We stripped approximately ninety per cent of these containers in our terminal facilities. Approximately twenty to twenty-five percent were twenty-foot containers and the balance were forty-foot containers. We stripped the cargo for our own convenience. The factors we considered in determining which containers would be stripped included: containers over-

loaded beyond highway weight limits; the pulling pin that sets into the fifth wheel connection on the tractor did not match up between the container and our equipment which made it impossible to adequately turn the truck; additional freight could be consolidated in a larger road trailer for the same delivery destination; per diem costs on the container; a lack of a return load for the empty container. (This is not a problem when Thurston trailers are used since we may interchange the empty trailer for use anywhere within our system but we must return the container to the Hampton Roads Port.).

Our customer is the owner of the cargo, in most cases the consignee, but in some cases the shipper. The steamship lines are never our customers regarding container shipments. We decide, usually with our customer's prior permission, when to break open a container and strip it.

In 1979 we hauled about 125 containers to the seaport for export. We stuffed about 100 of these containers at our terminal with full container loads from one shipper. In every case, our customer instructed us to stuff this cargo into a container. We are obliged to do this, because such service is covered by our tariff rate, and thus our agreement of shipment with our customer.

I have been in the trucking business in this port since about 1956. It is my opinion that the sea terminals in this port could not collectively or individually handle all the containers required to be stripped and stuffed at the sea terminals by the I.L.A. Rules on containers. It is also my opinion that they could not strip and stuff those containers required by the rules which were stripped and stuffed by motor carriers and warehousemen within fifty miles in 1979. The sea terminals lack this capacity for the following reasons. They do not have adequate warehousing space and docks for this cargo. Furthermore, the speed with which containerized cargo moves through the sea terminals is such that to strip and stuff the containers required by the rules would completely jam up the terminals. Containerized cargo presently moves

through the seaport terminals at such a rate that stripping and stuffing the containers required by the rules would cripple the port and drive cargo away from the port.

At present, even with our company and many others stripping and stuffing substantial amounts of container cargo at our motor terminals, the seaport terminals are so congested that the Marine Terminal Association is seriously proposing to require trucking companies to schedule appointments in an effort to alleviate the congestion and properly move break bulk cargo through the sea terminals.

It usually takes over a day or two, from the time we have left a trailer at the sea terminal to be loaded with LTL cargo by I.L.A. labor, before we can haul the trailer from that terminal. It takes approximately two and one-half hours to pick up a container. It usually takes three to five days for break bulk cargo to be hauled from the sea terminal after it has been cleared by Customs for the shipment. Containers can be hauled from the seaport terminal the same day they are cleared. The break bulk delay is due to the lack of capacity at the sea terminal to move this freight any quicker.

At least twice a week during the past two or three years, the Portsmouth Marine Terminal in Norfolk has been refusing to accept any more break bulk cargo for containerization at the pier after the lunch hour, because the warehouses at the terminal are full and there is no more storage room at the terminal for any additional freight at that time. This delay means that we have to return the cargo to our facility and bring it back to the pier on another day when the seaport terminal is not too busy to handle it.

Further, I saith not.

/s/ Eric T. Nielsen
ERIC T. NIELSEN

STATE OF NEW JERSEY)
) SS:
 COUNTY OF ESSEX)

I, POUL ROSANDER, after first having been sworn, state to my own personal knowledge and belief the following:

1. I am Manager of Wilson Container Co., Inc., One Exchange Place, Jersey City, New Jersey 07302, 201-432-8800. I have held this position for about four years. Wilson is a non-vessel operating common carrier (NVOCC) whose business it is to consolidate small shippers' loads from various shippers into containers for shipment across the seas, to deconsolidate containerized import cargo for distribution from our warehouse facility or storage in the warehouse, which is located on 12th Street in Jersey City, New Jersey, within 50 miles of the Port Of New York. By consolidating small shippers' loads into full container loads which we ship under our own name as an NVOCC, we are able to afford these small shippers of less than container load cargo a cheaper rate than they would obtain if they shipped the cargo themselves. We consolidate and deconsolidate cargo into and from containers at our Jersey City warehouse facility. These containers are hauled from our warehouse to Port Elizabeth, New Jersey, approximately 15 miles from the warehouse, or to Howland Hook pier facility, approximately 25 miles from the warehouse, and from these piers to our warehouse by independent contractor motor carriers.

2. Wilson Container Co., Inc., is a subsidiary of The Wilson Group, USA, Inc., which also provides customhouse broker facilities for import freight and serve as a freight forwarder for export freight. Our customhouse brokers and freight forwarders arrange for the delivery of export cargo to our Jersey City warehouse for consolidation by us and delivery to the pier, and arrange for the inland delivery or distribution of import cargo which

is hauled from the pier to our warehouse for deconsolidation. Alternatively, some of our customers make their own arrangements for the delivery of their freight to and from our warehouse by motor carriers. The Wilson Co., Inc., itself does not employ any truck drivers or provide any motor carrier services.

3. We employ four non-union employees at our Jersey City warehouse solely for the purpose of stuffing and stripping containers. These employees used forklifts, handtrucks, and similar equipment to load and unload these containers, the same equipment that they have always used for these tasks. Our warehouse facility consists of approximately 40,000 square feet at a single location. Our offices are located in an office building at One Exchange Place in Jersey City, away from our warehouse. Our warehouse is a bonded customs warehouse. This means that sealed import containers are hauled intact from the pier and unsealed at our warehouse under the supervision of United States Customs Officials, rather than being unsealed at the pier. We also seal export containers at our warehouse for delivery to the pier and shipment intact, without being opened and resealed on the pier. This service is attractive to our customers because it reduces pilferage and damage to cargo by eliminating cargo handling on the pier, in addition to the cost savings to small shippers by using our NVOCC full container load rate. Our warehouse also serves as a distribution facility for imported goods. In connection with this service, we arrange for motor carriers to haul full container loads of imported cargo to our warehouse, where our employees strip the containers and prepare the paper work necessary for other motor carriers to distribute this cargo to our customers from our warehouse. All of the services which I have described have been made possible by containerization, and the development of our business was primarily the result of the introduction of containerization into the Port Of New York. The success of our business and our profit depends directly upon our utilization

tion of containers. By maintaining our own warehouse facility and using our own trained employees to stuff and strip containers and handle our customers' cargo, we are able to maintain better control over that cargo and provide maximum care in its handling and storage, which is a primary feature of the service which we offer. For example, one of our customers is a large importer of paper rolls from Sweden. These paper rolls are extremely susceptible to damage from weather and mishandling, and our warehouse employees have been specially trained by our customer's own representatives in the United States in handling these paper rolls in our Jersey City facility. Moreover, there are no suitable warehouse facilities on the piers in the Port Of New York for storing these rolls of paper if they were decontainerized on the piers. In consequence, this customer utilizes our off-pier deconsolidation and warehousing services because this enables him to avoid unnecessary damage to the paper by untrained ILA labor on the pier and avoid double handling of the cargo since the paper rolls have to be delivered by truck to an off-pier warehouse for storage in any case. Our business has grown over the last few years because of the variety of services described above which we are able to offer our customers, beyond simply loading and unloading containers.

4. Services comparable to those which we offer at our off-pier Jersey City warehouse could not be offered at the piers in the Port Of New York. For example, we have a contract with a group of magazine and paperback book importers in Scandinavia. We receive American magazines and paperback books at our warehouse, where we sort them by hand according to their destinations, palletize them, and shrink-wrap these palletized loads before stuffing them into containers for delivery to the pier. The pier facilities do not have the capability to sort these goods by hand and shrink-wrap them after they have been palletized. The pilferage of these goods if they were handled on the pier would also increase dramati-

cally. The same considerations apply to other perishable and easily pilfered goods which we handle through our warehouse.

5. As an NVOCC, we are regulated by the Federal Maritime Commission. By virtue of regulations promulgated by that agency, we ship full container loads of consolidated cargo under our own names as the shipper, vis-a-vis the vessel operating common carrier (VOCC), with whom we contract for the sea carriage of our containerized cargo. As the shipper, we select the VOCC which will carry our containers and we select all of the services which that VOCC will provide, based upon the tariff filed by the VOCC with the Federal Maritime Commission, at the rates provided in that tariff. All of the services which we select are included in the Ocean Bill Of Lading which covers the sea movement of our containerized cargo by the VOCC. This Ocean Bill Of Lading is our contract with the VOCC. No services can be imposed upon us by the VOCC which are not specified in the Bill Of Lading, and no charges may be imposed upon us which are not provided in the Bill Of Lading. Thus, unless we request and pay for stuffing or stripping on the pier, and specify that labor service in the Ocean Bill Of Lading, on-pier stuffing and stripping of our containers cannot be imposed upon us by a VOCC without violating the Ocean Bill Of Lading, and we could not be required to pay for these unwanted services. Similarly, fines assessed under the ILA's Rules on Containers cannot be passed on to us by a VOCC consistent with the terms of our Ocean Bill Of Lading which does not provide for our payment of those fines. We have never entered into an Ocean Bill Of Lading which required us to reimburse a VOCC for fines levied under the Rules On Containers. As the shipper of these containers, we retain complete control over our cargo by virtue of the contract terms of the Ocean Bill Of Lading. VOCCs have no right to control what we do with containers and cargo at our warehouse, and have no right to impose unwanted labor services on us at the

pier since that extra stuffing and stripping work has not been specified in an Ocean Bill Of Lading.

6. Effective Friday, January 2, 1981, all VOCC with which we deal began enforcing the ILA's Rules On Containers in the Port of New York. Since that time, Atlantic Container Line has held up four of our import containers on the pier and refuses to release them to us unless they are stripped on the pier by ILA labor, under the Rules On Containers. We have refused to allow Atlantic Container Line to strip these containers on the pier because to do so would violate our customers' specific instructions to strip their cargo from the containers at our own warehouse using our own bonded employees. We cannot allow Atlantic Container Line to strip these containers on the pier without violating our contracts with our customers and severely damaging our business relations with them. I have contacted many other NVOCCs operating in the Port Of New York, and have learned that all VOCCs are similarly refusing to release import containers to them unless these containers are strip on the pier by ILA labor. Atlantic Container Line has also interdicted refrigerated containers of perishable foodstuffs at the pier even though these containers were moving "house to house," that is, from the point of shipment to a public warehouse off the pier, pursuant to Ocean Bills Of Lading. Because these foodstuffs will not be warehoused in the public warehouses for a minimum of 30 days, Atlantic Container Line and other VOCCs have refused to treat these containers as "house to house" containers, despite the terms of Ocean Bills of Lading which were issued for house to house movements, and will not allow these containers to reach the pier unless the importer agrees to warehouse the cargo for a minimum of 30 days, under the Rules On Containers. To the best of my knowledge, there are not sufficient refrigerated warehouse facilities available on the piers in the Port Of New York to allow the VOCCs to strip all perishable foodstuffs from containers and store them temporarily

on the pier awaiting pickup by motor carriers for delivery inland, as the Rules On Containers would require. Non-the-less, the VOCCs are refusing to release these containers of perishable goods for stripping off-pier and immediate delivery of the cargo. Atlantic Container Line has also told us that it will not allow our Swedish customer's rolls of paper off the pier unless the customer agrees to warehouse it in our facility for a minimum of 30 days which is causing him tremendous economic hardship because all of this paper is already sold and is due for immediate delivery to customers in the United States. Our Swedish customer cannot continue to operate under these conditions, and if they continue, he may abandon our services in preference to a warehouse facility more than 50 miles away from the pier, in order to avoid the 30 day warehousing requirements of the Rules On Containers. The VOCCs are also refusing to accept any export containers from us which we consolidated at our Jersey City warehouse, unless we agree to have them stripped and restuffed at the pier under the Rules On Containers. I have contacted many other NVOCCs in the Port Of New York, and have learned that the VOCCs are universally refusing to accept any full container loads of export cargo which was containerized within 50 miles of the pier. The enforcement of the Rules On Containers since January 1, 1981 has brought our container services virtually to a stand still, since the VOCCs will not release containers to us or accept loaded containers from us. If this continues, we will lose business which will move to warehouses beyond 50 miles from the pier or to Canadian ports, and we will probably never be able to get that business back. This loss of business is irrevocable, and will irreparably damage are NVOCC services to the loss of valued customers and businesses in a way for which money damages can not compensate us. Our company can not continue to do business without containers being supplied by the VOCCs, from whom we obtain all of our containers at this time.

7. Hapag Lloyd, a VOCC, which is a member of the New York Shipping Association, has also refused to give us containers or accept containers we send to the piers. C.J. La Penna, Vice President of Hapag Lloyd North Atlantic Service, told me on the telephone on Tuesday, December 30, 1980, his company would no longer be willing to accept containers loaded with cargo off the pier by our employees, even if their FAX tariff rate remained, in effect, because the ILA was objecting to our loading and unloading of containers within 50 miles. He also told me that Hapag would not furnish any more empty containers to our company. Hapag instructed our company on January 2, 1981, to return to the dock an empty container we already had at our facility.

8. In addition, on Tuesday, January 20, 1981, Wilson Container attempted to book two forty foot containers on an Atlantic Container Line sailing. These containers were leased by Wilson from a leasing company, not a VOCC, in Gothenburg. Although Wilson Container informed ACL of our leasing arrangement, Dan Carrigan, an official at ACL, told us the containers would not be handled unless we leased them under a three month agreement and filed the lease agreement with the ILA.

/s/ Poul Rossander
POUL ROSSANDER

AFFIDAVIT

COMMONWEALTH OF VIRGINIA

CITY OF CHESAPEAKE

I, Douglas P. Russell, being first duly sworn and cautioned state the following of my own personal knowledge and belief.

I am employed as Terminal Manager of McLean Trucking Company's Norfolk, Virginia area terminal located at 1310 Cavalier Boulevard, Chesapeake, Virginia 23323. I have been employed in this capacity for one year, prior to which time I was employed by McLean as its Terminal Manager in Albany, Georgia and before that as Assistant Terminal Manager in Winston-Salem, North Carolina. I have been employed by McLean since 1976.

As Terminal Manager of McLean's Norfolk terminal, I am responsible for McLean's local terminal operations. The Norfolk area serves Lambert's Point Dock, Norfolk International Terminal, Sewell's Point Dock and Portsmouth Marine Terminal. Until 1979, we also served the Newport News Terminal from our Norfolk facility.

McLean is an I.C.C.-regulated motor common carrier engaged solely in the interstate transportation of general commodity freight by motor truck throughout the United States. All of McLean's non-clerical, hourly-rated employees at its Norfolk terminal are represented for purposes of collective bargaining by Local No. 822 of the International Brotherhood of Teamsters Union.

McLean does not deliver or pick up any freight for delivery in the local Norfolk area from its Norfolk terminal, or elsewhere in Virginia. All of the freight which McLean picks up at the seaport terminals it services from its Norfolk facility is hauled to consignees outside of Virginia, and all of the freight which McLean receives at its Norfolk terminal for export comes from shippers outside

or Virginia. Approximately seventy percent of the freight which McLean handles through its Norfolk terminal is import cargo and the remaining thirty percent of the freight is export cargo.

McLean does not handle any less-than-container load (LCL) or less-than-trailer load (LTL) containerized freight at its Norfolk terminal. All of the containerized freight which McLean handles through its Norfolk terminal is full shipper's load (FSL) cargo from a single shipper destined for a single consignee. McLean does not consolidate or deconsolidate any LCL or LTL freight into or from containers at its Norfolk terminal, nor does it transport any LCL or LTL freight in containers. Any LCL or LTL freight which McLean handles through its Norfolk terminal is non-containerized, break bulk cargo which is containerized or decontainerized at the seaport terminal by I.L.A. labor.

McLean does not warehouse any freight at its Norfolk terminal or use its Norfolk terminal as a distribution facility for its customer's freight. McLean's Norfolk terminal is a traditional freight terminal where McLean transfers cargo between its over-the-road tractor trailers, and containers and its local delivery trucks. McLean hauls containers, whether empty or full, only between its Norfolk terminal and the seaport terminal. All deliveries between McLean's Norfolk terminal and the seaport terminal are made by container or by a local delivery truck, in the case of LCL or LTL break bulk cargo. McLean strips all FSL import containers at its Norfolk terminal and reloads the cargo into its own over-the-road trailers at the terminal. McLean stuffs all FSL cargo which arrives at its Norfolk terminal for export into containers at its terminal and then hauls these loaded containers to the seaport terminal as FSL containerloads. All stuffing and stripping of containers, loading and unloading of over-the-road trailers and local delivery trucks, and all other cargo handled by McLean's Norfolk terminal is done by McLean's teamster-represented employees.

Prior to 1975, McLean hauled some containers in interstate commerce. However, we found that our tractors were damaged by the containers when we did this because the containers do not hook up properly to our tractors. Accordingly, in 1975, we stopped hauling any containers over long distances and commenced our present practice of hauling containers only between our freight terminal and the seaport terminals, and stuffing and stripping all containers at our terminal. In 1979, we hauled ninety-five import containers and forty export containers between our terminal and seaport terminals, all of which we stuffed or stripped at our terminal. The number of containers we handled has decreased since 1975 because we haul them only between our facility and the seaport terminals. A chart showing the history of McLean's handling of containerized cargo at its Norfolk terminal, which I prepared from our business records, is attached hereto as Exhibit A.

McLean uses fork lifts, pallet jacks, hand trucks, and hand labor to load and unload containers in the same way that it has always loaded and unloaded truck trailers. Modern containerization has not changed McLean's methods of work or labor requirements, and McLean handles all cargo, whether containerized or break bulk, in the same way.

McLean hauls containers only between the seaport terminal and its Norfolk facility and consolidates and deconsolidates all containerized freight to and from its over-the-road trailers at its facility, rather than haul containers interstate, for the following reasons:

1. McLean's tractors are incompatible with the chassis of containers because the fifth wheel on the tractor is not designed to accommodate the container hook-up; hauling containers with McLean's tractors for a distance in excess of approximately twenty-five miles will damage the tractor;
2. The per diem charge of \$10.00 to \$12.00 imposed on McLean for the use of a container under

an equipment interchange agreement makes it dis-economic for McLean to use containers rather than its own over-the-road trailers to haul freight to and from points inland;

3. Neither the standard twenty-foot nor the standard forty-foot container holds as much cargo as McLean's forty-five-foot long, thirteen and one-half foot high over-the-road trailer, making it more economical for McLean to haul freight in its own trailers;

4. Since McLean's equipment interchange agreement requires it to return all containers to their points of origin, McLean would have to haul empty containers back to their points of origin if it used them for long-haul carriage inland, whereas McLean can reroute its own tractor trailers as needed elsewhere in the United States to avoid the expense of an empty return trip to the port or the point of origin;

5. McLean also avoids hauling freight over the road in containers to minimize container maintenance costs under the equipment interchange agreement;

6. Since many import containers which McLean picks up at the sea terminal are loaded too heavily for safe and legal long-haul highway carriage and may not have proper weight distribution for highway carriage, McLean must reload the freight from these containers into its own trailers to comply with federal, state, and local highway laws, regulations and ordinances and for reasons of safety;

7. Under McLean's collective bargaining agreement with the Teamsters Union, only local drivers haul freight between McLean's Norfolk terminal and the seaport terminals and only over-the-road drivers drive McLean's long-haul tractor trailers in interstate commerce. Since all cargo is picked up or delivered to the sea terminals by our local drivers, it must be transferred to and from over-the-road trac-

tor trailers driven by our long-haul drivers at the Norfolk terminal.

All of the containers which McLean stuffs and strips at its Norfolk terminal are stuffed and stripped only for these reasons, relating solely to McLean's operations as an interstate motor carrier. In no case has McLean ever stuffed or stripped a container at its Norfolk terminal to avoid I.L.A. on-pier labor or costs relating to I.L.A. labor.

The I.L.A. may not prohibit McLean from stuffing or stripping a container or dictate McLean's use of a container which is obtained under an equipment interchange agreement. The equipment interchange agreement is a contract between McLean and the company that owns the container, and provides for McLean's exclusive use and control of the container, for which McLean pays a per diem fee to the container owner.

Since McLean's Norfolk terminal is located within fifty miles of the seaport terminals we serve, McLean will be denied access to containers or will be forced to pay fines by the sea carriers if McLean continues to stuff and strip containers at its Norfolk terminal, in the event that the I.L.A. rules on containers are enforced, even though McLean stuffs and strips only FSL container loads for reasons unrelated to I.L.A. labor or I.L.A. labor costs. Enforcement of the I.L.A. rules on containers will force McLean to cease hauling containerized freight through its Norfolk terminal, since it would not be economical to do so under the rules. In my opinion, the seaport terminals we serve are incapable of accommodating the stuffing and stripping of all containers on the pier and the I.L.A. could not handle the stuffing and stripping of all containers at the pier. Among other things, since it takes only four hours to interchange a container, but it takes as long as a day to pick up break bulk cargo on the pier, the consolidation and deconsolidation of all containerized cargo on the pier will cause such delay in cargo processing that our customers will transfer their

business to other ports. Thus, in my opinion, enforcement of the I.L.A.'s rules on containers will not result in more work for I.L.A. on-pier labor, but will only drive business away from the Hampton Roads port.

Further, I saith not.

/s/ Douglas P. Russell
DOUGLAS P. RUSSELL

AFFIDAVIT

COMMONWEALTH OF VIRGINIA

CITY OF NORFOLK

I, Daniel M. Thornton, Jr., business address 3616 Virginia Beach Boulevard, Norfolk, Virginia 23502, after first being sworn state of my own personal knowledge and belief the following.

I am President of Southgate Corporation doing business as Southgate Trucking and Southgate Terminal Warehouse Company. Both of these divisions of our company operate at a warehouse and truck dock establishment located at 3700 Village Avenue, Norfolk, Virginia 23502. This facility is within 50 miles of the port of Hampton Roads, Virginia. A copy of a brochure describing our current services is attached herewith as Appendix A. A copy of our brochure describing our services in approximately 1965 is attached herewith as Appendix B. A copy of a brochure describing our corporate services in approximately 1930 is attached herewith as Appendix C. At that time our warehouse operation was located on a sea pier. Our three main warehouse buildings and the sea pier are shown on the picture on page 2 of Appendix C. At that time, ships were unloaded at our pier by I.L.A. longshore labor. Our non-union employees moved the break-bulk cargo across the pier into our warehouses for storage, deconsolidation, repacking and ultimately rehauling to the consignee. On page 7 of the brochure is listed thirteen services we offered to our customers.

Our company was formed in 1892 and has been in continuous operation since then. In approximately 1930 our company formed a separate division to operate the business of general warehousing. For many years we operated this service within our seaport terminal facilities. From the beginning we have been the largest warehous-

ing and distribution facility in the port area for food-stuffs. Our customers have historically used us as a distribution center so that they would not have to build additional warehousing facilities of their own.

For many years we have operated a local cartage trucking business, making pick ups and deliveries in the local area.

Since 1892 our company offered freight consolidation services to shippers. We accumulate cargo from various shippers in our warehouse for shipment in large amounts to west coast ports. Such consolidation offers cheaper transportation rates to our small shippers. Prior to containerization, all of this consolidated freight was in break-bulk form. After the modern container was developed, our consolidated freight was stuffed into containers for shipment. Likewise, throughout the history of our company we have received large shipments of imported goods and deconsolidated them at our warehouse for distribution to many small consignees. Until the modern container was used we received this import freight in break-bulk form. After containerization, we deconsolidated the cargo from the container in the same manner as we used to with respect to break-bulk cargo.

The first container ship brought imported cargo to the Hampton Roads Port in 1967. The vessel "Tennier," owned by the Belgian Lines, the predecessor of Dart Container Lines, was a converted break-bulk vessel which brought the first containers. The day it docked, I, as a member of the City Council of Norfolk, attended a luncheon on the ship to celebrate the introduction of the new service to the port. From that time until 1969 to 1970, our company handled any and all containers in any manner we saw fit without objection from the steamship lines or the I.L.A.

The introduction of the container did not materially affect the physical operation of our consolidation and deconsolidation services. Our warehouse employees loaded and unloaded cargo from and to the container in the same

manner they had done so when it was break-bulk cargo being hauled in a tractor trailer truck. We used the same equipment, such as power driven fork lift trucks, hand carts, and dollies. Even today, we could consolidate and deconsolidate break-bulk cargo for our customers in our warehouse and transport it to and from the piers in break-bulk form, without any significant changes in our methods of operation. However, the enforcement of the I.L.A.'s rules on containers, beginning about 1969 or 1970, had a drastic adverse impact on our consolidation and deconsolidation and warehouse business.

Before, when a container filled with cargo arrived at a port terminal consigned to us as agent for the ultimate consignee, our customer, one of the trucks picked it up and pulled it to our warehouse. If the container held a full load of the same cargo going to the same customer, we would haul it to our yard until it could be delivered by us or some other motor carrier. However, if our customer wished to store that cargo in our warehouse, we would strip the container and store the cargo until our customer directed that some or all of the products be forwarded to a designated location. These distributions would be made both within and outside a 50-mile line around the port. We might store these goods from one day to one year or more. Our historical pattern has been that a majority of our warehoused goods were shipped out within 30-45 days of receipt. The introduction of containerization did not change our pattern of warehousing or reshipping during the years 1967-1969. This pattern was and is dictated by sales of our customers and their orders for our distribution.

Between 1967 and 1969 when we were handling container traffic without I.L.A. interference, the volume of cargo we shipped and received did not vary from our historical pattern. In other words, no customers were using our warehousing facilities as merely consolidation and deconsolidation stations to avoid paying I.L.A. labor rates.

Enforcement of the rules on containers adversely affected us, beginning in the early 1970s, in this way. The I.L.A. would instruct the steamship lines not to release containers we had been ordered by our customers to pick up at the seaport terminals. The I.L.A. felt that stripping and stuffing of containers at our warehouse violated the rules. These containers were then stripped by the I.L.A. at the piers. We picked up this formerly containerized cargo in break-bulk form at the pier and brought it to our warehouse where it was treated in our normal fashion. Because the I.L.A. stripped the containers, the terminal company charged our customers extra fees, to cover the cost of I.L.A. stripping. These extra fees had not been part of the original shipping agreement between the shipper and the consignee, who had agreed to transport the cargo in containers at container rates, with the understanding that these containers would be stripped by us.

Historically in the Port of Hampton Roads, prior to this year I.L.A. labor working at the seaport terminal loaded break-bulk cargo in our trucks without the assistance of our employees. Therefore, the introduction of containerization saved our company no additional loading and unloading costs for movement of cargo from the seaport terminal into our warehouse. Both before and after containerization, our driver simply pulled a loaded trailer from the terminal to our warehouse, where our warehousemen unloaded the container or trailer.

The effect of containerization was to save our customers the cost of paying I.L.A. labor to handle the cargo in break-bulk form on the pier. When the rules on containers were enforced, our customers, who expected container cargo to be delivered to our warehouse without the expense of I.L.A. stripping and reloading into our trucks, were required to pay for this unwanted service.

This had the effect of causing our customers to cease using us as a port area agent and distribution center. To avoid these I.L.A. extra expenses, many of our customers of long standing simply had other trucking com-

panies haul containers, both full shipper's loads and less than container loads, to someone else's warehouse and distribution center beyond the 50-mile limit. Attached hereto as Appendix D is a list of some of the import and export commodities we lost, from customers of long standing, as a result of this effect of the rules. Therefore, the rules on containers, when enforced, did not have the effect of providing additional stripping and stuffing work to the I.L.A. at the seaport terminals. It only had the effect of forcing business away from us and beyond the 50-mile limit.

In every case, where we handled cargo in break-bulk or containerized form, our customer, whether he be an importer or exporter, always specifies what services we are to perform on his behalf. Our customer instructs us to strip or stuff containers or deliver them unopened to some other location.

When a customs house broker or a freight forwarder directs us to pick up a container from the seaport terminal, it issues a "delivery order." The name of the ultimate consignee, the identification of our company as the consignee's agent, the identification of the type of container and cargo contained therein, the type of movement (house-to-house, pier-to-pier, house-to-pier, pier-to-house, etc.), and any other special conditions pertaining to the container such as inspection of the cargo by various Government agencies. A copy of a typical delivery order is attached herewith as Appendix E. We have never received or used a delivery order that in any way indicated how long the cargo would be warehoused by us.

Our warehouse is a bonded U.S. Customs Department warehouse. This means that containers can be brought to our warehouse and remain sealed here until a Customs inspector arrives to break the seal, inspect them, and permit us to remove the contents. Approximately 10-15% of the total containers stripped at our warehouse are inspected at our warehouse by Customs upon the direction of the shipper or his agent. Such a container cannot be

opened, whether for inspection purposes or stripped at the pier, without violating those instructions.

Many customers of ours want their containers inspected by Customs at our warehouse because it avoids the delay of inspection at the seaport terminal. Delays are caused when cargo is inspected at the pier by Customs; it is required to be placed in a U.S. Customs bonded area on the sea terminal until the duty is paid. It usually takes much longer to clear the port and to be forwarded on to the ultimate consignee than when this inspection is performed at our warehouse. Therefore, we are able to offer a faster warehousing and transportation service on this type of containerized cargo than the terminals.

For similar reasons cigarettes and other cargo which are being exported are processed through our warehouse under the control of the Alcohol, Tobacco and Firearms Division of the U.S. Internal Revenue Service.

Attached here to as Appendix F is a chart showing the volume of cargo and numbers of containers we have handled with respect to our warehousing operations in selected years.

Further, I saith not.

/s/ Daniel M. Thornton, Jr.
DANIEL M. THORNTON, JR.

AFFIDAVIT

STATE OF VIRGINIA,

CITY OF NORFOLK, to-wit:

I, Martin E. Day, reside at 1136 Cresthaven Lane, Virginia Beach, Virginia 23462, and, after first being duly sworn, state on my own personal knowledge and belief the following:

I am a licensed Customhouse broker and a licensed foreign freight forwarder, doing business in the Port of Hampton Roads, Virginia. I have been in business for myself for the past 11 years. Prior to that time, I performed the same work for Wilfred Schade & Co., Inc. for five years and for Cavalier Shipping Company, Inc. I am quite familiar with all the duties and responsibilities required of Customhouse brokers and foreign freight forwarders, and the functional integration of our services with those of shippers, consignees, terminal companies, steamship line companies, railroad companies and motor carriers. I work with all of the major carriers and related service companies in the Port of Hampton Roads.

A Customhouse broker is an agent of an importer of cargo. The importer contracts with the Customhouse broker to clear the import cargo with the United States Department of Customs and other governmental agencies which regulate import cargo and movement. All import cargo must be inspected for compliance with Customs and other laws by Customs inspectors before it can be finally released for further land shipment. Imported shipments remain under surety bond coverage, issued by the ocean vessel operating company, until Customs inspects the cargo and it is released from bonded shipment. The purpose of the bond is to insure that the Customs laws and regulations are complied with.

Most cargo is inspected at the seaport terminal and released by Customs for further transport. As soon as

cargo is cleared by Customs, the import duty must be paid on it by the importer. Frequently an importer will want to delay payment of this duty. He can do so by permitting the cargo to remain under bond and not having it cleared by Customs. Seaport terminals maintain bond warehouses for this purpose. Bonded cargo is locked in a secured warehouse area. Customs inspectors supervise placing of the cargo in the bonded warehouse and the removal of it. Only they have keys to the bonded warehouse.

Customshouse brokers prepare, on behalf of the importer, the documents necessary to clear the cargo through Customs, including calculating the duty owed. This document is filed with Customs. This document is generally called a "Customs Entry" Form. I also am responsible for resolving any disputes arising with Customs over the cargo.

I perform similar services for the importer in clearing the cargo through the regulatory inspection and procedures of the United States Department of Agriculture, Food and Drug, and others, and the State's authorities such as The Alcoholic Beverage Control Board.

Approximately 15% of the imported cargo is not cleared by Customs at the seaport terminal. The importer may direct bonded cargo to be delivered to a bonded warehouse off the sea terminal premises but in the general vicinity of the port area or hundreds of miles away. Warehouses that offer bonded warehouse services must be licensed by Customs and operated in the same manner as sea terminal bonded warehouses. The ocean vessel operator's bond of the cargo does not extend beyond the sea terminal. Cargo bonded beyond that point in another warehouse must be bonded by the importer. During transportation between the seaport and the bonded warehouse the carrier bonds the cargo. Along with the surety bond, those responsible for bonding must keep documents showing close control and accountability of the cargo, which is filed with Customs. Bonded ware-

houses are only permitted in areas where there is sufficient volume and convenience for Customs to inspect cargo.

If cargo is to be moved from the sea terminal to a bonded warehouse, the Customshouse broker is still required to file with Customs an "In Transit Entry" form which simply records the transaction.

The documents and procedures followed are the same whether or not the cargo is being transported as break-bulk or in inter-model containers.

In addition to handling the regulatory matters, a Customshouse broker must act as the importer's agent with respect to handling his accounts with the ocean vessel operator and the terminal company. Typically, the shipper or his agent prepares a bill of lading covering the sea movement or cargo. When a cargo is delivered to the ocean vessel carrier, it signs the cargo on board its ship, by dating the bill of lading, verifying the number and kind of cargo received and numbering the bill of lading. This bill of lading, executed between the shipper and the ocean vessel carrier, becomes a contract of carriage. The ocean vessel operator is responsible to transport the cargo, without loss or damage, and deliver it to the importer or his agent. The carrier never takes title to the cargo. Most cargo shipped across the ocean is covered by a negotiable bill of lading. The original bill constitutes legal title to the cargo, which may be traded as commercial paper or negotiated for credit. By this document the shipper transfers title of the goods to the importer. After the cargo is signed on ship, the ocean carrier is given a copy of the bill of lading for record purposes. The original bill of lading is sent back to the shipper. The shipper typically turns the original bill of lading and other related documents over to his bank, which sometimes credits him with the value of the bill. The bank then forwards the documents to the importer's bank for completion of the transaction with the importer. The more usual banking transaction is that the shipper's bank

transfers the paper to the importer's bank for collection, and the shipper is only given credit after the collection is made. Once the importer pays the bank the value of the bill of lading, he takes title to the cargo.

The terms of transportation are negotiated between shipper and importer at the time of the initial sale transaction. There are many ways of allocating shipping costs between the two parties. The three most common methods of transportation costs division are F.O.B., C.I.F. and C. & F. F.O.B. (free on board) requires the importer to pay all transportation costs, including insurance, after delivery to the export sea terminal. C.I.F. (cost, insurance and freight) requires the shipper to pay the insurance and the ocean freight costs. C. & F. (cost and freight) requires the shipper to pay the freight and the importer to pay the insurance. The party who pays the cost of such carriage is entitled to choose the carrier and the method of transportation.

Therefore, either the shipper or the importer contracts with the ocean vessel operator to move the cargo pursuant to the agreement of carriage entered into before the carriage is made. This agreement is based on the terms and conditions of tariffs filed by the ocean carrier. These terms and conditions are very specific and the tariff rate is fixed. They are not subject to change during the carriage because of any intervening factor, including collective bargaining agreements such as the ILA Rules on Containers. Once an ocean carrier accepts shipment pursuant to a particular tariff, he is responsible for the services required therein to be paid for at the tariff rate. If the parties have agreed that a container of cargo will be carried without stripping or stuffing at the sea terminal by ILA labor, no additional charges can be levied by the ocean carrier against the other party for this service.

I have never seen a bill of lading agreement between a shipper or importer and an ocean carrier which provides for stripping and restuffing of a container already stuffed with cargo by someone acting on behalf of the shipper

before the container reaches the sea terminal, or stripping or restuffing a container at the import sea terminal which is destined for container movement beyond. The only bill of lading agreements I have ever seen required ILA labor to strip or stuff containers at the sea port terminals which had not already been done away from the sea terminal. Thus, it would be a breach of the shipping agreement for the sea carrier or the terminal company to cause a full container brought to the sea terminal to be broken open and the cargo rehandled by ILA labor before ocean movement.

Many shippers and importers want their cargo to be packed in containers in special ways for its protection from damage or loss by pilferage, use of cheaper or more effective packing materials, cheaper labor packing costs, cheaper ocean tariff costs, and sometimes more efficient packing which permits a greater volume of cargo to be shipped in a single container than can be packed in it at the sea port terminals by ILA labor.

Such vessel operators do not, in most cases, own or operate sea terminals. An exception in the Port of Hampton Roads is the Sea-Land Container Terminal, owned and operated by Sea-Land Services, Inc. for its exclusive use, which is a vessel owning and operating company. The capital improvements and the land at the other sea terminals in the Hampton Roads Port are owned by the Virginia Port Authority, a State agency. Some of the terminal companies, such as Portsmouth Marine Terminals, Lambert's Point Terminal, and Seawell's Point Terminal, are leased by the Virginia Port Authority to privately owned terminal companies. The Norfolk International Terminal, the largest sea terminal in the port, is a nonprofit corporation owned by five stevedoring companies. Stevedoring companies are in the business of loading and unloading ships calling at the sea terminal. Stevedoring companies employ ILA labor to do this work. Stevedoring companies do not own or operate ocean ves-

sels. Shippers and importers never enter into any agreements with stevedoring companies.

Stevedoring companies provide labor for unloading and loading vessels according to contract between vessel operators and stevedoring companies. These are called longshoremen. Terminal companies enter into contracts with the stevedoring companies for the provision of ILA labor, called shortshoremen to handle the cargo in the warehouses and between the dock and the rail car or the motor truck.

Stevedoring companies negotiate different contracts with shortshoremen and longshoremen. There are different bargaining unit descriptions of the type of work covered. Shortshoremen and longshoremen belong to different locals of the ILA.

It is my understanding that the ILA's Rules on Containers were negotiated to preserve work for longshoremen, not for shortshoremen. It is my understanding that all stripping and stuffing of containers at sea terminals is performed by longshoremen and not by shortshoremen.

The only charges a shipper or importer would normally pay for services rendered at sea terminals, other than the tariff rate paid for ocean movement, would be for costs incurred by terminal companies for loading or unloading break-bulk cargo on to or from motor or rail carriers' vehicles. Naturally, no agreement is made between the shipper or importer to pay these terminal charges when the agreement for such carriage provides for full container movement from points beyond the export terminal to points beyond the import terminal.

When the ocean carrier offers a tariff agreement of carriage for container transportation services of the type whereby cargo is loaded and unloaded in and from the container by other than ILA labor at the sea terminal, it is bound by that agreement to carry the containerized cargo and deliver it without additional labor services being performed at the sea terminal, regardless of who strips or stuffs the container away from the sea terminal.

The Customhouse broker also arranges for inland transportation of import cargo. Sometimes an importer specifies the type of inland carriage and/or the specific carrier. Usually these selections are left to me. I will arrange and direct long haul motor carrier services to a point specified by my client. Sometimes, my client directs that the authorized cargo be delivered to a local warehouse for stripping, for further immediate movement inland, or storage until inland movement is directed.

As a foreign freight forwarder, I perform for exporters services similar to those I perform for importers. Normally, the shipper arranges for land transportation of cargo to a warehouse in the local area or the sea terminal. Normally, I arrange on his behalf for the sea carriage, including the selection of the carrier. I also advise the shipper on different types of tariffs and transport arrangements. On every occasion my client instructs me on the type of service he wants, and I merely make the arrangements on his behalf. Although I prepare the shipper's bills of lading, I never issue them in my own name either as a shipper or a carrier. Customhouse brokers and foreign freight forwarders are merely agents of principals.

Nonvessel operating common carriers (NVOCC's) perform many of the services I perform. However, they also issue bills of lading in their own names and contract for carriage in their own names cargo they have received and consolidated for shipment from small shippers. Thus, NVOCC's become the shipper and the importer with regard to all modes of transportation between the point of consolidation at the NVOCC's warehouse and the point of deconsolidation at his warehouse on the import side.

Importers and exporters pay for my services directly. Also, in addition, I am paid a brokerage fee by ocean vessel shippers for booking cargo passage on their ships.

Further I saith not.

/s/ Martin E. Day

AFFIDAVIT OF JOHN M. HAYNES

STATE OF NEW YORK)
) SS.:
 COUNTY OF NEW YORK)

JOHN M. HAYNES, being duly sworn deposes and says:

I am the Executive Vice President of Respondent, New York Shipping Association, Inc. ("NYSA"). I submit the following direct testimony and annexed exhibits on behalf of Respondents, NYSA.

I was first employed by NYSA in 1958 as special assistant to NYSA's Chairman. Prior to my employment with NYSA, I was employed by American President Lines, first as a seagoing officer and later as its port captain or terminal manager at its pier facility in the Port of New York. I have from time to time physically observed the operations at most of the waterfront facilities in the Port of Greater New York. My duties and functions, first as special assistant to NYSA's Chairman, then as NYSA's Administrative Director, and now as Executive Vice President, have consisted of active participation in the negotiation, administration and implementation of labor contracts entered into by NYSA with the International Longshoremen's Association, AFL-CIO ("ILA"). I am intimately and personally aware of the facts and circumstances set forth in this direct case.

I. Interested Persons

A. Employer Associations

1. Council of North Atlantic Shipping Associations ("CONASA") is an unincorporated multi-employer bargaining association, which functions as the collective bargaining representative in negotiating and administering collective bargaining agreements with the International

Longshoremen's Association, AFL-CIO ("ILA") covering terms and conditions of employment of longshore labor in the ports of Boston, New York, Providence, Philadelphia, Baltimore and Hampton Roads, on the North Atlantic coast of the United States. Its members are the various employer shipping associations operating in the six major North Atlantic ports, as follows:

The Boston Shipping Association, Inc.
 Rhode Island Shipping Association, Inc.
 New York Shipping Association, Inc. ("NYSA")
 Philadelphia Marine Trade Association
 Steamship Trade Association of Baltimore, Inc. and
 Hampton Roads Shipping Association

CONASA's constituent port association members, each negotiate and administer collective bargaining agreements with the ILA covering local conditions.

2. NYSA is an incorporated New York Not-for-Profit membership association which negotiates and administers collective bargaining agreements with ILA on behalf of its members. The membership of NYSA consists of stevedores, common carriers by water, carrier agents, terminal operators, lighterers, contracting guard service and other concerns functioning in waterfront related activities involving or related to the ocean shipment of cargo, freight and the transportation of passengers.

3. For many decades, bargaining on the Atlantic and Gulf coasts commenced with negotiations between the ILA and its constituent locals, and NYSA in the Port of New York. After agreement had been reached with NYSA, the ILA would bargain with other ports. In 1956, a major demand of the ILA in New York negotiations was for the extension of bargaining on a coast-wide basis. After a lengthy strike that year the employer associations in the other North Atlantic ports agreed that NYSA could execute a master contract on behalf of itself and the other North Atlantic ports with respect to certain specified issues. In 1956, and in each of the suc-

ceeding collective bargaining periods, including the one ending September 30, 1971, master contracts covering the specified items were entered into by NYSA with the ILA for and on behalf of itself and the other North Atlantic employer association. Prior to negotiations of the 1971-1974 contract with the ILA the constituent member associations of CONASA entered into an arrangement to form CONASA. Thereupon, negotiations commenced between CONASA and the ILA concerning various terms and conditions that would be applicable to all North Atlantic ports. Certain other items known as local working conditions would still be negotiated locally by each of the ports with ILA. On November 16, 1971, CONASA and the ILA formalized the scope of their negotiations in a memorandum of agreement, annexed hereto as Exhibit 1, which reads in pertinent part as follows:

"1. ILA and CONASA agree to act as the collective bargaining representatives for their constituent locals and members, as referred to above, on the seven master contract items which are as follows:

A. Wages

B. Hours

C. Contributions to the Welfare Plans (but not the benefits)

D. Contributions to the Pension Plans (but not the benefits)

E. Term of the Agreement

F. Containerization [which includes the Rules on Containers]

G. Lash

All other terms and conditions of employment are local items which will be negotiated locally

by each of the above port associations and their ILA locals in each respective port."

B. *Union*

4. ILA, an unincorporated labor organization, has for more than 50 years represented longshore employees who perform the work of loading and unloading ships, and all other functions incident thereto in the Port of New York as well as in all other applicable ports on the East and Gulf coasts of the United States. ILA has been certified by the NLRB as the exclusive bargaining representative of said employees (*See, Matter of New York Shipping Association*, 116 NLRB 1183 (1956)). It has negotiated and entered into collective bargaining agreements with CONASA, NYSA, and with the other constituent member associations of CONASA, covering the terms and conditions of employment of these employees in the CONASA ports. Similarly, ILA negotiates and enters into collective bargaining agreements covering the terms and conditions of employment of these employees in other ports on the East and Gulf coasts of the United States.

C. *Joint Labor Management Bodies*

5. The CONASA-ILA Container Committee is a joint labor-management board formed and created pursuant to the provisions of the 1974-77 collective bargaining agreement between CONASA and ILA for the purpose of implementing and administering in all six CONASA ports the CONASA-ILA Rules on Containers to insure clarity and uniformity of interpretation and enforcement. It is composed of an equal number of representatives of labor and management—one CONASA and one ILA representative from each CONASA port.

6. There is in each CONASA port a joint labor-management committee consisting of an equal number of union and management representatives formed and created pursuant to the provisions of the 1974-77 collective bargaining agreement between CONASA and ILA and

to the provisions of the applicable local ILA collective bargaining agreement in each CONASA port. Each joint committee is authorized and responsible for the implementation and administration, within its particular port area, of the CONASA-ILA Rules on Containers. Each joint committee is empowered *inter alia* to hear and pass judgment on any violations of the CONASA-ILA Rules on Containers.

7. The NYSA-ILA Contract Board is a joint labor-management board consisting of an equal number of NYSA and ILA representatives. It is charged with the implementation and administration, within the Port of Greater New York, of the 1974-77 CONASA-ILA collective bargaining agreement and the local collective bargaining agreements entered into between NYSA and ILA. The NYSA-ILA Contract Board also acts as the NYSA-ILA Container Committee whose jurisdiction encompasses the CONASA-ILA Rules on Containers, their enforcement and administration. The NYSA-ILA Container Committee is empowered *inter alia* to hear and pass judgment on any violations of the CONASA-ILA Rules on Containers occurring in the Port of Greater New York.

D. *ILA's Traditional Work Jurisdiction*

8. For many decades, ILA members on the Atlantic and Gulf coasts have handled, to the exclusion of all other workers, all of the work in connection with the loading and discharging of cargo on ships. In addition, the ILA workers have also performed work on the piers which is known as terminal work. Terminal work includes all services rendered by contracting stevedores and steamship carriers either after the cargo has been discharged by the ship or before the cargo has been put aboard the ship. This work has included all work in connection with the preparation of such cargo for loading aboard the ship and all work preparatory to delivery of the cargo to inland carriers, after the cargo is discharged from the ship. The receipt and delivery of cargo has also been

performed by ILA workers. Traditionally, export cargo would normally be delivered by truck, rail or lighter to the terminal facility. ILA longshoremen would receive (and thereafter handle) the cargo from the tailgate of the truck, from the door of the railcar and from the first place of rest after removal from a lighter. This work was handled piece by piece and parcel by parcel.

9. Prior to the use of special equipment, such as hi-los, longshoremen would lift the cargo, piece by piece, into hand trucks and move it to a place of rest in the terminal building. Here, the cargo would be prepared for loading aboard the vessel. ILA checkers would tally the cargo, either truckside or at the terminal; ILA longshoremen would make up the drafts and pallets in preparation for lifting the cargo into the ship; ILA coopers would repair any damage to that cargo; ILA carpenters would prepare wooden boxes or containerlike devices where special security or care in handling was required; and ILA sorters might sort the cargo by type, port, hatch, etc.

10. After this cargo was prepared for loading, ILA ship gang workers would receive the cargo at a place of rest at the end of ship's tackle. It would be brought to this point by ILA terminal workers. From this place of rest, the cargo would be lifted into the ship's hold. In order to properly safeguard the cargo and protect the stability of the vessel, it was necessary for ILA carpenters to lay dunnage, make wooden separations and build up floors in the hold on which cargo could rest. Here, ILA longshoremen would again take the cargo, piece by piece, and place it in secure positions throughout the hold or hatch, following the loading plan of the ship's officer or stevedore supervision. Thus, cargo would have to be loaded so that it was readily accessible at the various ports at which the ship might call. Cargo which was to be removed at the first port-of-call would have to be so placed that the longshoremen at the port could remove such cargo without disturbing other pieces of cargo destined for later ports-of-call. The ship's labor also had

to take into consideration the weight, density, fragility, combustibility and other elements relating to particular pieces of cargo. In brief, the longshoremen performed a tedious, manual task which required many hours of labor as well as the skill attached to the know-how of ship's stowage and cargo peculiarities.

11. With respect to import cargo, the work performed by the longshoremen and other ILA crafts was substantially similar. A vessel arrived at the Port of New York which, in all probability, contained cargo for other North Atlantic ports such as Boston, Philadelphia, Baltimore or Hampton Roads. The New York longshoremen would identify the New York cargo and remove it from the ship. At the same time, they would be required to protect the cargo remaining aboard the ship by shoring or other devices. Prior to 1962, most vessels in the Port also had ILA hatch checkers who would tally the cargo as it was removed from each hatch and give a report to the terminal supervision, on a piece-by-piece basis, of the cargo actually removed. After being put to a place of rest on the pier, the cargo would be taken either by hand (or later by hand truck, and even later by hi-lo) into the terminal where it would be placed in designated areas. There, the cargo would be prepared for delivery to the consignee-drafts and pallets would be broken down, wooden boxes would be opened and unloaded, cargo would be sorted in accordance to type, size, shape, consignee, etc. Fragile or highly pilferable cargoes would be placed into special security areas known as cribs, security lockers, etc. Thereafter, the cargo would be delivered to the consignee. If the consignee had sent a truck to the pier, ILA longshoremen would take the cargo from the terminal and physically load the truck while ILA checkers kept a tally of this loading process. Similar functions were performed in respect to railcars and lighters or barges.

12. World War II brought about a use of various box-like devices into which cargo could be stored. The mili-

tary had used such devices for special cargoes such as munitions, food stuffs, weapons, etc. After WW II, certain of the steamship carriers acquired some of the boxes and used them for highly pilferable, fragile or hazardous cargoes. However, such use was infrequent and of little consequence. On an average ship, such cargo might relate only to less than a fraction of one percent of the total cargo on a particular ship. However, the loading of cargo into, and the discharging of cargo out of, such devices was always performed by ILA labor at the pier or terminal. As these containers or devices became more common, certain exceptions began to develop. One such exception pertained to United States Mail. Prior to the use of these boxes, U.S. Mail was normally delivered to the pier in large canvas sacks. The eventual use of 8' X 8' X 8' boxes (as well as some smaller) by the U.S. Mail was considered somewhat akin to the large canvas sacks. Further, the ILA longshoremen have historically had an intense patriotic nature. It was considered that the U.S. Mail should be permitted to move with facility, ease and little restriction. The same consideration was true with respect to the personal effects of military personnel. The ILA felt it had a special obligation to the embarking soldier or the returning warrior whose personal effects were entitled to special protection and quick transport.

13. Insofar as household goods were concerned, there was a special historical reason which emanated from the early 1930's. At that point in time, refugees from Nazi Germany were emigrating to the United States. Such household effects as they were able to take with them were almost invariably placed in large wooden crates similar to a household moving van. The total amount of such personnel household effects were negligible and again the longshoremen permitted their removal on and off the piers. When the Puerto Rican migration commenced in the period following World War II the same considerations were applied to such migrants.

14. The work opportunities thus presented created the approximately 43 million hours of work which longshoremen performed in 1958 in handling 12 million long tons of cargo. Thus, (at that time) productivity in the port averaged about .3 of a ton of cargo for every manhour worked. At the present time, there are approximately 19 million tons of cargo being moved with approximately 19.5 million manhours. Thus, the productivity per man-hour in the Port has increased by 300%. If the productivity of 1958 has remained on the same basis, there would be approximately 60 million workhours for the ILA in the Port of New York today. Exhibit 2 annexed hereto sets forth NYSA Employment Statistics setting forth for contract years ending 9/30/51 to 9/30/76 inclusive total ILA employees registered with the Waterfront Commission in the Port of New York, total hours worked, total wages paid and total Guaranteed Annual Income ("GAI") expenses incurred.

15. Of the 12,264 men now in the workforce, an average of 7,500 men are hired on a daily basis. Seldom does the daily hiring reach the 8,000 man mark. Containerization still left a substantial amount of work on the piers and terminals to be performed by ILA members. ILA longshoremen and other dockworkers have worked on stuffing and stripping containers at the piers from the very inception of containerization to the present time. Every container steamship line in the Port of New York maintains an LTL (less-than-trailer-load) facility at its piers where substantial numbers of containers have cargo loaded into and discharged out of such containers by ILA members. Cargo going into such containers is delivered to such facilities and is handled from trucks by ILA workers who physically load the cargo into containers. Similarly, cargo from such containers is discharged by ILA workers who deliver such cargo to delivery platforms for loading by other ILA workers into trucks. In the year 1975 it is estimated that over 2,000 ILA employees worked over 3 million manhours handling over 1.5 mil-

lion LTL tons of cargo. The purpose and intent of the ILA in pressuring NYSA and its members was to maintain and preserve such LTL work for ILA employees.

16. From the very inception of containerization, the ILA resisted strenuously the use of the container concept. The ILA opposed any concept which would take away any of the work traditionally performed by its members. This resistance has been manifested in strikes, wildcat job action, grievances, arbitration and court actions. The first arbitration involving containerization is dated November 13, 1958. In this proceeding, clerks, checkers and longshoremen at United States Lines' Piers 59 and 74 on the North (Hudson) River in Manhattan refused to handle six containers consigned to Bremerhaven and to Antwerp. Four of these containers were Railway Express containers "said to contain household and military effects." The other two were Ford Motor Company boxes "said to contain auto parts." The arbitrator directed that these containers be handled but recommended ". . . that the parties promptly meet for the purpose of achieving a solution of the entire subject. . ." The ILA did not accept this decision. On the contrary, it issued instructions that it would not handle any containers for any steamship lines who had not engaged in container operations prior to October 1, 1956. The ILA sought to prohibit any change in the method of handling containers from that followed by steamship carriers prior to 1956. The Vice President of United States Lines had conceded the pre-1956 practice in the industry of loading and unloading containers at pierside with ILA labor when he stated at a meeting of the Port of New York Joint LRC (a joint labor-management board formed to enforce and administer collective bargaining agreements between NYSA and ILA) held on November 19, 1958:

"Let me clarify something. We have handled containers prior to 1956, but containers that were loaded on the pier. That is, the cartons are loaded in the

containers on the pier, and discharged. I am not going to mislead anybody." (*Emphasis added*)

For several weeks after the ILA's announcement, many containers in the Port were stopped. As a result of grievance discussions before the Port Arbitrator, on December 17, 1958, the Port Arbitrator issued an announcement that the ILA had agreed to handle containers for all companies engaged in the operations as of November 12, 1958 when the container matter was first brought before the Port of New York Joint Labor Relations Committee. Steamship companies not previously handling containers would give advance notice to the ILA of any such proposed new operations. In the meantime, the parties would negotiate with an attempt to reach a solution. The arbitrator announced further that in view of this agreement "... the container dispute currently in arbitration would accordingly be held in abeyance without prejudice to either party." Such negotiations and meetings were held for many weeks thereafter. However, no agreement could be reached and the parties entered the 1959 negotiations with containerization a major issue. It would remain a major issue for the next eighteen years and is the critical issue in the current longshore negotiations which, as of this date, are marked by a general longshore strike against all containership carriers on the East and Gulf Coasts.

E. The 1959 ILA Negotiations

17. Various proposals and counter-demands were placed on the table:

- (a) ILA's persistent demand was that all containers "... be opened on the pier and discharged by ILA."
- (b) NYSA's initial counter-demand was for contractual language that would protect the "unfettered" rights of employers "to inaugurate and regulate automation operations. . ."

- (c) On October 20, 1959, NYSA sought to satisfy the union's principal concern with consolidators by proposing a penalty of 25 cents per gross ton on cargo in containers loaded by forwarders and consolidators who did not employ ILA labor.
- (d) This proposal was rejected out of hand by the ILA. In a proposal of October 29, 1959, the ILA demanded that the employers "... agree that their employees shall be protected against any job, work, and benefits losses which may result from unitized cargo or container use, and that their employees are entitled to a fair share from the benefits of increased efficiency."

18. After strenuous negotiations on this issued, the collective bargaining agreement of December 3, 1959 (covering the 3 year period from October 1, 1959 to September 30, 1962) recognized the right of employers "to use any and all types of containers without restriction or stripping by the Union." However, it was agreed that:

"Any work performed in connection with the loading and discharging of containers for employer members of the NYSA which is performed in the Port of Greater New York whether on piers or terminals controlled by them, or whether through direct contracting out, shall be performed by ILA labor at longshore rates." (Section 8(c), Memorandum of Settlement, December 3, 1959).

The NYSA-ILA 1959 Memorandum of Settlement is attached as Exhibit 3. It was further agreed in the 1959 Memorandum of Settlement that the parties would negotiate, and on failure to agree, arbitrate the royalty to be paid on shipper load containers which are loaded or unloaded away from the pier by non-ILA labor. After a lengthy arbitration was held on the container royalty matter, an award was issued on November 21, 1960 fix-

ing the amount of the royalty at 35 cents per gross ton on conventional ships, 70 cents per gross ton on partially automated ships, and \$1.00 per gross ton on fully automated ships. The Arbitration Award is attached as Exhibit 4.

F. *The Period Following the 1959 Negotiations—A Period of Labor Strife.*

19. The 1959 negotiations were no sooner completed before labor strife, in the form of wildcats and quickly stoppages, erupted throughout the Port in protest of the loss of job opportunities caused by containerization. The parties began the arduous task of applying the new contractual language to actual situations. The union's position during these many grievances was that the 1959 negotiations only permitted the free movement of containers in the area outside of the Port. After many work stoppages and months of discussion, NYSA issued the following statement to the ILA on February 28, 1962, to clarify NYSA's interpretation of Section 8(c) of the 1959 Memorandum of Settlement:

"Where an employer member of NYSA supplies a container which is the property of such member, to a consolidator for loading or discharging of cargo in the Port of Greater New York, it will be stipulated that such container must be loaded or unloaded by ILA at longshore rates."

The February 28, 1962 Interpretation is attached as Exhibit 5. Thus, from February 28, 1962, the rule that ILA labor would strip and stuff a container of a steamship carrier supplied to a consolidator, which was the traditional custom and practice in the industry, was codified in the established labor relations law in the Port of New York.

20. This rule was shortly thereafter applied against Sea-Land Services, Inc., which was the inaugurator of fully-containerized operations, using specifically designed

cellular container ships. Sea-Land first commenced full containership service in 1958 in the New York to Puerto Rico trade. In 1962, Sea-Land was found by the Joint NYSA-ILA Labor Relations Committee ("LRC"), to have violated the contract in supplying containers to consolidators. The minutes of the LRC proceeding is attached as Exhibit 6.

21. The fight against containerization was led by the ILA's President, Thomas W. Gleason, who has prophetically stated the impact of containerization on the job opportunities of the ILA's members. Thus, at the 1959 ILA Convention (July 13, 1959), Mr. Gleason stated:

"I believe that the cargo container will be forced on shipping lines through competition . . . I am convinced that it has got to come, and when it does come, its effects on us can be tremendous. It is not too farfetched to estimate that we stand to lose, in the full force of the container use, 8,000 to 9,000 jobs in the New York area alone, and a proportionate number in all other ports. This amounts to 30% of the membership. . ."

G. *The Period from 1962 Through 1968*

22. The 1959 statement of President Gleason has continued as the basis for ILA policy in all ensuing negotiations. In 1962, NYSA was seeking to obtain relief from restrictive work practices under the collective bargaining agreement. After a lengthy strike, a Presidential mediation panel, headed by Senator Wayne Morse, recommended that the parties agree to a comprehensive study on manpower utilization and job security by the United States Department of Labor. This study was to be made during the term of the new 2-year agreement and the results of such study were to be the subjects of bargaining in the 1964 negotiations. As a result of the Government's intervention, no changes were made in the containerization agreement (Exhibit 3, p. 2, 1959 Memo-

randum of Settlement, Section 8(c)), although the ILA had demanded that all containerized cargo be loaded or discharged by ILA labor only. The fact that the contract language did not change, did not end the constant labor struggle against expanded containerization. Thereafter, containers found by the ILA, which it considered violated the contract were stopped. It had been the employer position that the provisions of Section 8(c) of the 1959 Memorandum of Settlement (Exhibit 3, p. 2) applied only to containers owned or leased by employer members of NYSA. The ILA position was to the contrary. Grievances and work stoppages continued. Those that involved the supplying of the carriers' containers to consolidators were resolved in favor the the ILA; other situations for the most part went unresolved. Countless meetings held on the subject by representatives of both NYSA and ILA were unable to finally resolve the many troublesome issues.

23. At the advent of the 1964 negotiations, the ILA again made its demand that all containers be loaded and stripped by ILA deep-sea labor. However, the major issue in the 1964 negotiations related to the recommendations of the Department of Labor's Manpower Utilization Study which recommended certain changes in the work rules and additional job security for the worker. After lengthy arduous and strike-marked negotiations, an agreement was worked out giving the employers certain concessions in the area of manpower utilization and giving to the union members the first GAI plan in the industry. The containerization provisions of the labor agreement remained unchanged. No sooner had the contract been agreed to, than the ILA renewed its efforts in its fight against containerization. Again, there were many incidents involving stoppages of containers on the waterfront. In November of 1966, the ILA demanded that the agreement be reopened on the subject of containers. NYSA refused but did meet with the union over a long period of time in an attempt to find some common solution to this

perplexing and long-continuing problem. Meetings were held in November, December of 1966 and January, February of 1967. NYSA on December 15, 1966 issued a motion proposing strict contract compliance with respect to the use of containers and proposing a joint study to assist workers who were displaced by containerization. The inability of the parties to find areas of agreement apparently convinced the ILA that broad relief could only be attained in the course of the negotiations. By 1967, containerized cargo had grown substantially to approximately 2.6 million long tons, or approximately one-fifth of the cargo handled in the Port of New York. In 1967 Sea-Land Service, Inc. introduced the first fully-containerized vessel into the large North Atlantic trade. Many major steamship carriers then announced plans for embarking on container operations and many new and fast containerhips were being built in shipyards throughout the world.

24. A full year before the 1968 negotiations commenced, the ILA held its conventions in Miami Beach, Florida, during the period July 10 to July 21, 1967. Resolutions were passed in opposition to containerization calling for all containers to be stuffed and stripped by ILA labor at deep-sea rates and at water-front facilities, piers or terminals. The ILA thus entered the 1968 negotiations with a mandate from its Conventions that containerization be seriously restricted. NYSA entered the negotiations with a desire to protect the new innovative method of cargo movement.

H. *The 1968 ILA Negotiations*

25. Negotiations began in July of 1968. They were destined to be heated, protracted and marked by a long strike that lasted 57 days in New York and over 100 days in the other ports along the East-Gulf coasts of the United States. The major issue in these negotiations was first, and foremost, the issue of containerization. In its report to the President of the United States, the Board

of Inquiry, established pursuant to the national emergency provisions of the Taft-Hartley Act, stated in its report, dated October 1, 1968 (attached as Exhibit 7):

"There are two overriding issues and the failure to resolve these has prevented the parties from reaching agreement on other items."

"The two critical issues relate to union-wide collective bargaining and the impact or consequences of containerization or mechanization." (Exhibit 7, p. 3)

26. In the opening days of the negotiations, the goals of the ILA and the goals of NYSA on containerization were diametrically opposed. The ILA demand was that all containers and containerized cargo was to be stripped and loaded by ILA labor. NYSA's first proposal sought the free movement of containers of all types without restriction. These counter demands were both made on the same day, namely, July 10, 1963. In the almost ten years since the 1959 negotiations NYSA and ILA had essentially agreed that containers coming from consolidators were to be stuffed and stripped by ILA labor, at the piers or docks. This was the clear thrust of Section 8(c) of the 1959 agreement. That which NYSA sought to preserve was the free and unfettered movement of non-consolidated full shipper's loads of containers moving in great volume through the Port of New York.

27. From August 23 of 1968 and continuing into January of 1969, the subject of containerization was almost a daily item for discussion and continued disagreement in the negotiating sessions. On October 1, 1968, the ILA called a coast-wide strike in all ports from Maine to Texas. This strike was enjoined under the emergency provisions of the Taft-Hartley Act shortly after it started. Negotiations continued in the following months, again with very little progress. It was not until after NYSA agreed to increase GAI benefits, which up to that time covered 1600 hours per year, to 2,080 hours per year, that ILA indicated a willingness to explore changes in its

position which would permit the continued free flow of shippers' loads of containers. This improvement in GAI was to cost the employers in the Port of New York in the contract year ending 9/30/76 over \$50,000,000 per year in additional benefits (Exhibit 2). It was the *quid pro quo* for the ILA moving away from its firm position of adamancy that *all* containers be stuffed and stripped at the docks by ILA labor. By January 12, 1969, basic agreement had been reached in the Port of New York. The 3-year collective bargaining agreement (attached as Exhibit 8) to be effective for the period October 1, 1968 to September 30, 1971 contained the following three major items:

- (a) Wage and fringe benefit increases amounting to \$1.60 per hour over the three-year term;
- (b) An increased GAI of 2,080 hours per year for all qualified workers covered by the various ILA craft agreements; and
- (c) The Rules on Containers

28. The ILA had by the collectively-bargained Rules on Containers thus preserved the protection it had won beginning in 1959, and which it had fought for with countless strikes and work stoppages. On the other hand, the employers won the right to continue to move most containers, namely non-consolidated full shipper loads, without stuffing or stripping by union members. Thus, manufacturers' loads or full shippers' loads, as well as all containers coming from or going to points fifty or more miles from a port, constituting 80% of the containers moving in the Port of Greater New York, were excluded from the stuffing and stripping requirements. The ILA insisted on each and every one of the eight different rules set forth in Rule 3 of the Rules on Containers and entitled "Rules on No Avoidance or Evasion". Each of these rules was intended to assure that the employers and carriers would live up to their obligations

and stuff and strip at the piers all LTL or consolidated container loads. Most importantly, the union insisted on a clause set forth in Rule 3(h) which, in effect, permitted the renegotiation of the rules if the purpose of protecting and preserving the work jurisdiction of the ILA was not accomplished by the provisions of the rules. Rule 3(h) was resisted strongly by the employers who capitulated under pressure at a time when the entire coast was shut down and where the effect on the national economy was extremely grave.

29. The labor agreement reached on January 12, 1969, in New York did not end the strike. The ILA refused to submit the agreement for ratification until all other ports had accepted the basic New York contract. Refusal to bargain charges were brought to the National Labor Relations Board by NYSA. The NLRB sought and secured an injunction mandating a referendum by the ILA members in New York. On February 14, 1969, the agreement having been accepted by the membership, the strike ended and there was a return to work in New York. In other ports, the strike continued. Finally, on April 14, 1969, agreement was reached in the last holdout ports in Texas. The strike had lasted a total of 115 days in various ports. In the last analysis, however, the ILA obtained approximately the same container agreement in all ports from Maine to Texas.

I. *The Period Following the 1968 Negotiations—Second Circuit and NLRB Uphold Legality of Rules on Containers*

30. The new collective bargaining agreement created a container committee which "... shall have the responsibility and power to hear and pass judgment on any violations of these rules." (Exhibit 8, p. 70 Rule 3(g)). Shortly after the negotiations ended, the functions of the committee were given to the NYSA-ILA Contract Board. During the period following the contract, it met with

great frequency and held hearings on alleged violations of the Rules. This committee has made many findings of violations, especially in cases involving consolidators. Attached as Exhibits 9A through 9G inclusive are various container violation reports which were issued during that period, advising all stevedores and carriers of the necessity for strict compliance with the Rules on Containers.

31. The work of the NYSA-ILA Contract Board with respect to containerization continued with almost weekly meetings. In May of 1970, the ILA gave notice that the traditional work jurisdiction of deep-sea longshoremen was being threatened by certain practices including letters of concurrence issued by certain members of the NYSA. (A concurrence was an authorization issued by a carrier that customs inspection could be carried out at a facility away from the piers.) The ILA demanded assurances from NYSA that the Rules on Containers would be enforced according to their terms and all concurrences would be withdrawn. The ILA charged that these concurrences would be withdrawn. The ILA charged that these concurrences were being used as a device to have containers moved to consolidators' stations where customs inspection would take place. Extensive negotiations were held between the NYSA and ILA on this subject. The parties were unable to reach agreement. Thereupon, ILA invoked the provisions of Rule 3(h) (Exhibit 8, p. 70) and issued directions to its membership that all containers in all North Atlantic Ports were to be stuffed and stripped at the piers. This stoppage of all containers continued for several days. Finally settlement was reached on May 27, 1970 (Exhibit 9D).

32. The legality of the Rules on Containers was tested in the Courts and before the NLRB by Intercontinental Container Transport Corporation ("ICTC"). ICTC brought an action in the federal courts against NYSA and ILA, seeking to enjoin the enforcement of the Rules on Containers based on their alleged illegality under the

Antitrust Laws. The United States Court of Appeals for the Second Circuit, *International Container Transport Corp. v. New York Shipping Association, Inc. and International Longshoremen's Association*, 426 F.2d 884 (2nd Cir. 1970), upheld the lawfulness of the Rules on Containers as valid work preservation provisions. Similarly, the Rules on Containers were held to be valid work preservation rules by the 22nd Region of the National Labor Relations Board ("NLRB") in NLRB Case Nos. 22-CE-12 and 22-CC-389. In that case, ICTC filed an unfair labor practice charge asserting that NYSA and ILA had by the Rules on Containers violated 8(e) of the National Labor Relations Act, as amended, and that the ILA had violated 8(b)(4)(B) thereof, by entering into "an agreement whereby said employer-member ceases or agrees to cease doing business with other employers." After extensive analysis and investigation, the charges were dismissed and the validity of the Rules on Containers upheld since they were found to involve legitimate union concern and a proper subject of collective bargaining. The determination of John J. Cuneo, Regional Director of the NLRB, is annexed as Exhibit 10. On appeal, the dismissal by the Regional Director was affirmed by the General Counsel of the NLRB in a decision dated October 16, 1970, which is attached as Exhibit 11.

J. *The 1971 CONASA-ILA Negotiations*

33. Negotiations between CONASA and ILA continued on various dates from November 16, 1971, through February 14, 1972. The ILA had commenced a coast-wide strike on October 1, 1971, because of the breakdown of negotiations and the GAI issue in New York. This strike continued until enjoined by a Taft-Hartley injunction in various courts during the period November 26, 1971 to November 29, 1971. In the negotiations with CONASA, ILA was concerned not so much with the substantive container rules but with methods of assuring that the Rules

on Containers were uniformly and non-discriminatorily enforced and applied. Most of the negotiations during the 1971-1972 period were spent in discussions with respect to methods of enforcing compliance with the Rules.

34. The result of these lengthy negotiations between CONASA and ILA was that the Rules on Containers were adopted as the CONASA-ILA Rules and embodied in the present collective bargaining agreement between CONASA and ILA covering the period from November 14, 1971 through September 30, 1974. The CONASA-ILA labor agreement is attached as Exhibit 12.

35. Soon after the contract had been agreed to by the ILA, the ILA continued its efforts to obtain full and complete enforcement of the Rules on Containers. At meetings with employer representatives the ILA again reiterated its position that the carriers were violating the contract. On May 11, 1972, the ILA, by Thomas W. Gleason, President, served notice on NYSA that violations of the Rules on Containers "... have now grown to where there is a complete abrogation and disregard of the contract with respect to the loading and stripping provisions . . .". The ILA served notice that unless all violations are stopped immediately the ILA would invoke its contractual rights under 3(h) of the Rules on Containers (Exhibit 12, p. 3). In response thereto, on May 12, 1972 the President and Chairman of NYSA sent a letter to all steamship carriers and direct employers that the Rules on Containers must be strictly observed (Exhibit 9G). In this connection it was stated that: "The ILA is particularly disturbed by the increased use of consolidators and truckers to perform work which is clearly within the jurisdiction of the ILA under the contract." It was stated that spot audits and investigations would commence immediately.

36. From that point forward, the two container investigators, employed by the joint NYSA-ILA Container Fund, to uniformly enforce the Rules on Containers and to uncover and investigate violations thereof, were sup-

plemented by NYSA employees who began to visit the many consolidation facilities in the Port of Greater New York where containers were being stuffed and stripped by other than ILA labor. After the above letters (Exhibit 9G) were distributed, many meetings of the NYSA-ILA Contract Board sitting as the joint NYSA-ILA Container Committee were held and reports of investigations received. In the course of these meetings, various steamship carriers were called in for the purpose of determining whether or not the Rules were being violated. Despite the best efforts of the parties, the ILA continued in its position that the Rules on Containers were not being lived up to especially with respect to consolidators' facilities. Finally, on October 31, 1972, a notice was sent by the NYSA-ILA Contract Board to all steamship carriers and direct employers. A copy of this letter is attached as Exhibit 13. This letter again warned that the ILA was concerned with "the spread of consolidation stations operated by steamship carriers as well as those outside the industry" and that the ILA would invoke 3(h) unless the violations were discontinued.

37. The number of violations found by the container investigators continued to grow. The ILA had stated many times that the carriers could stop the violations by not supplying their containers to consolidators or to others who used them to circumvent the contract. On November 15, 1972, notice was given to the principal container lines in the Port of New York to attend a meeting at the Whitehall Club on November 20, 1972. At this meeting (the minutes are appended hereto as Exhibit 14) the ILA took the strong position that supplying containers to consolidators was a violation of the contract and that all containers should be stopped unless the stevedores and carriers began to live up to the agreement. After the meeting of November 20, 1972, counsel met on several occasions for the purpose of drafting a document entitled "Enforcement of Rules on Containers". This document carried out the intent of the meeting of November 20,

1972. It was circulated to all carriers for their comments on December 19, 1972. A copy of the document and covering letter is attached as Exhibit 15. Certain changes were made in the draft between December 18, 1972 and its presentation to the meeting of the CONASA-ILA Container Committee held on January 25-29, 1973, in Dublin, Ireland. A copy of the Minutes of the Dublin meeting together with Interpretive Bulletin No. 1 which was issued as a result thereof, is attached as Exhibit 16. Interpretive Bulletin No. 1 was the collectively bargained interpretation of the Rules on Containers formulated by CONASA and ILA for the purpose of promulgating rules for the uniform and effective enforcement of the Rules on Containers. It codified *inter alia* the standing principle first enforced against Sea-Land Services, Inc. in 1962 that a carrier is prohibited from supplying its containers to consolidators. The Dublin Rules were viewed as the means needed to restrain violations of the Rules on Containers. If CONASA, NYSA and the ocean carriers had refused to accept the Dublin Rules, the ILA would have struck and stopped all containers in the North Atlantic ports, including the Port of New York. Soon after their enactment, the Dublin Rules were applied against various steamship carrier members of NYSA. In 1973, 1974 and 1975, these carriers, including those named in the complaint, *viz.* Transamerican Trailer Transport, Inc. ("TTT") and Puerto Rico Maritime Shipping Authority ("PRMSA"), paid many hundreds of thousands of dollars for not obeying the Dublin Rules and for permitting consolidated containers to move over their docks without stripping or stuffing by ILA workers. The carrier members of NYSA were instructed to insist that LTL cargo be delivered to the piers in uncontainerized form.

K. 1974 Negotiations

38. As had been the case in every major negotiation with the ILA since 1957, and specifically including the 1959, 1962, 1964, 1968 and 1971 negotiations, the prin-

principal issue faced by the CONASA-ILA negotiators continued to be containerization and its tremendous impact on the job opportunities of the ILA employees on the piers and terminals in the North Atlantic coastal ranges. The negotiations commenced again with the demand on the ILA that all containers be stuffed and stripped on the piers by the ILA. In presenting this demand at the commencement of the CONASA-ILA negotiations, ILA President Thomas W. Gleason again reiterated the oft-repeated position of the ILA that containerization had deprived the ILA of countless job opportunities and that in order to protect its traditional work jurisdiction and the pierside jobs of the ILA longshoremen and related crafts, the ILA would have to insist upon the right to stuff and strip every container at the pier facility with deepsea ILA labor.

39. In pointing out the background of this demand, Mr. Gleason stated that the ILA work force in the Port of New York during the period 1968 to 1974 had been decimated by the effects of innovation. In this regard he pointed out that the almost 24,000 longshoremen who had labored almost 40 million manhours in the contract year 1967/68 had been reduced to 13,000 longshoremen in the Port of New York who had labored only approximately 24.5 million hours in the contract year 1972/73 (Exhibit 2). He also complained bitterly that the Rules on Containers were not being lived up to by the employer members of CONASA, the steamship companies and the stevedores to the full extent that they should be lived up to and that certain consolidators or non-vessel operating common carriers ("NVO'S"), had conspired with others to circumvent the Rules on Containers by various devious devices. He stated that the ILA could not continue to give up work opportunities to innovation in areas where the work had been traditionally performed by the ILA and where it was of the nature that could just as easily be performed on the piers and terminals as it had traditionally, than at inland installations within a 50-mile area of each port by outside groups.

40. CONASA's initial position was that all containers should be permitted to move without any restriction by the ILA. The mere making of this demand led to almost a complete breakdown of the negotiations at that point. The ILA immediately rejected any such positions; said it was a regression; that the ILA could not tolerate it; that the ILA would not be pressured out of business; and, that the stated desires of the ILA for a contract without a strike should not be taken as any sign of weakness. He stated that if CONASA was to take any position of that type, that a strike would be certain and assured.

41. As a result of the diametrically opposed positions of the parties at the first negotiating session in March, 1974, no further formal meetings were held until June, 1974. However, during the interim period, various committees of ILA and CONASA, as well as NYSA, met with the ILA seeking to find a means to settle and resolve the container issue. The desire of the shipping industry was to permit shippers as much flexibility as possible without, at the same time, causing a certain work stoppage. The negotiations had been entered into with publicly stated declarations by both the industry and labor that the shippers need not have any fear of a work interruption in October, 1974 as had been the unfortunate history for some 30 years prior thereto.

42. It appeared to the members of CONASA, as well as the members of the various shipping associations in the North Atlantic, that the container issue would have to be resolved and resolved on a fair, equitable and proper basis if progress was going to be made in the negotiations. Therefore, a median position between that of the ILA and that of CONASA would have to be found. Many proposals were discussed and analyzed. In exploring all of the various alternatives, and various other methods which might be used to protect the work opportunities and job opportunities of the ILA and its workers, the parties kept on coming back and back again to the same rules which had been in existence from 1959 through the time of the negotiations.

43. The formal negotiations between CONASA and ILA commenced at the Di Lido Hotel in Miami Beach, Florida on June 11, 1974. On each and every day, as well as evening and night, from June 11 right to the end of the negotiations on June 21, 1974, the major issue and sometimes the only issue separating the parties was again this issue of containerization. During the course of these negotiations the discussions continued almost without end. Drafts, redrafts, attempts at solutions all proved unavailing. The parties finally realized that the only way that progress could be made was to continue the Rules which each of them had found to be fair and equitable. These Rules were the same Rules that had been in effect since 1959 and had been codified in 1968 and accepted in their totality by CONASA and ILA in 1971.

44. The parties then turned their attention to the simplification of the Rules and their redrafting and revision for the purposes of clarity and better understanding. It was decided by the parties to incorporate Interpretive Bulletin No. 1, the so-called Dublin Rules (Exhibit 16) into the 1974-77 Rules in order to assure the effective implementation of the Rules and to provide the means to restrain and proscribe violations of the Rules. The final agreement was reached on the 1974-77 Rules on Containers in the same form as they existed for years (See Exhibit I to General Counsel's Exhibit 3). The execution of the 1974-77 Rules on Containers did not put to rest the ILA's continuing complaint that the steamship carriers were violating the contract. In late March, 1975, the ILA announced its intention to exercise its right to reopen the Rules because of its claim that the carriers were not abiding by their contractual commitments. On April 28, 1975, the ILA unilaterally suspended the Rules and began to strip all containers in all North Atlantic Ports with the exception of shippers' loads. This job action continued for almost a month during which intensive negotiations were conducted between CONASA and ILA to settle the disputes. Finally, on May 30, 1975, the parties resolved

their differences with the execution of the clarified and restated 1974-77 Rules on Containers (Exhibit J to General Counsel's Exhibit 3). Containerization, however, continues to this day to be a hotly contested and complex issue in longshore labor relations. The current collective bargaining negotiations for a new contract to commence October 1, 1977 are stalemated. The ILA is now engaged in a strike against all containership carriers from Maine to Texas. Containerization and its effects are the critical issues separating the parties.

* * * *

/s/ John M. Haynes
JOHN M. HAYNES

AFFIDAVIT OF JAMES J. DICKMAN

STATE OF NEW YORK)
) ss.:
 COUNTY OF NEW YORK)

James J. Dickman, being duly sworn says:

1. I am the President of New York Shipping Association, Inc. ("NYSA"). For over ten years, I have been one of the chief negotiators of the labor agreements between the shipping industry and the International Longshoremen's Association, AFL-CIO ("ILA"). During a *six-year* period from 1971 to 1977, I was also President of the Council of North Atlantic Shipping Associations ("CONSA"). At the present time, CONASA, NYSA, West Gulf Maritime Association, Southeast Florida Employers Association and the Mobile Steamship Association bargain jointly as a management team on all master contract issues, including containerization. The resulting contracts cover some 36 ILA ports from Maine to Texas.

* * * *

2. I have been in the stevedoring industry for more than 35 years. I started as a longshoreman, later became a checker, rose to pier superintendent after rising through various supervisory positions, became a vice-president and, eventually, the President and Chairman of Universal Terminal Operating Company, which was among the largest stevedoring companies in the United States with operations on the Atlantic, Gulf and Pacific coasts of the United States. Because of my experience, I am thoroughly familiar with the work of the longshoremen from 1943 to the present time. I also know the work of truckers because for several years I managed a trucking company with twelve large trucks which delivered cargo between piers.

* * * *

3. I have been involved in labor negotiations in this industry for almost 30 years. I was employed as a con-

sultant by the industry in 1962 and helped prepare a major report by the United States Department of Labor on the functions of Longshoremen and on longshore manpower utilization. I was on the piers on April 26, 1956 when the first ship loaded with containers arrived in the Port of New York. The ship was an old converted tanker with 58 loaded containers strapped to its deck. Its arrival marked the beginning of industry unrest on the issues of technological innovation and job preservation. That ship was struck and the industry has had to negotiate on this issue from that day down to the present.

* * * *

7. The above affidavit presents a full picture of all facts through 1977. The period of time covered by that affidavit ended during the 1977 strike. That strike again was over the ILA's insistence on some form of job security and job preservation because of the continued impact of containerization during a period when the Rules on Containers were enjoined by NLRB injunctions in the Conex and Twin cases. The strike lasted from October 1, 1977 to November 26, 1977 at a cost to the industry, the worker and the public of an amount described by the United States Department of Commerce to be in excess of one billion dollars. The outcome of these negotiations, as shown by the attached settlement agreement (Exhibit A), was:

- a) CONASA's and NYSA's agreement that the legal fight in defense of the Rules on Containers was to continue with full vigor; and
- b) the creation of a new job security program intended to protect contributions to welfare, pension, and GAI funds during such legal fight. This program is known as the Job Security Program (JSP).

8. In 1980, management and the ILA were able to negotiate an early master contract on May 27, 1980, pri-

marily because in September of 1979, the United States Court of Appeals for the District of Columbia, in the *Dolphin* case, had reversed the determination of the NLRB and found the Rules on Containers to be valid work preservation rules. At the start of negotiations, in May, 1980, arguments had already been heard by the Supreme Court (on April 22, 1980) and therefore, management was able to convince the ILA that the issue of containers should be laid aside to abide by the decision of the Supreme Court. The ILA's agreement, however, was tied to management's acceptance of the language in a clause in the master contract which gave the ILA the right to reopen the master agreement in the event that the rules on containers were determined to be illegal.

* * *

9. The history of the negotiations show that whenever containerization was an issue, a long strike occurred. This was the history of 1959, 1962, 1964, 1968, 1971 and 1977. In 1974 and 1980, when the issue was set aside pending judicial or administrative decisions, there was no strike. On the basis of such history, it is established that the ILA's quest was solely and exclusively for job preservation. The Supreme Court decision did not finally settle the containerization issue. Instead, the matter was remanded to the Board.

* * *

10. I was initially able to convince the ILA not to immediately reimplement the Rules but to seek the General Counsel's cooperation in an expedited determination by the Board. To this end, I instructed our counsel to communicate with the General Counsel immediately after the June 20, 1980 decision of the Supreme Court, and to seek to implement a procedure for such speedy resolution. On July 2, 1980, counsel for ILA, NYSA and CONASA called upon the General Counsel's office and met with Deputy General Counsel Norton Come, Assistant General Counsel Joseph E. Mayer and other representatives of

the General Counsel's office. The request at that time was for agreement on a single jurisdiction to hear all Rules matters, a quick application to the various courts to remand all pending matters back to the Board and agreement to seek to vacate all existing injunctions. The General Counsel's office agreed to take our various requests under advisement. Unfortunately, he never responded to them. In the meantime, our counsel and ILA's counsel moved assiduously in all Courts and succeeded (with some opposition from G.C.) in having Orders of Remand entered by the Courts of Appeals for the Second Circuit, Fourth Circuit and Fifth Circuit.

* * *

15. Meetings were held with the union on an almost round-the-clock basis and in a crisis atmosphere. I have never had more difficult negotiations. The frustration of labor in finding themselves faced with further years of endless litigation while their jobs were being eroded was understandable. However, it was just as frustrating to management to be unable to respond in any meaningful manner since General Counsel had taken a position he knew many years of continued uncertainty. Finally, both labor and management agreed on the only realistic solution; that the Rules on Containers were to go into effect on January 1, 1981, except in any port where an injunction was in effect.

16. We gave the general public as well as the NLRB, the FMC and all other interested bodies, over three weeks notice of our intent. The Rules went into effect on January 1, 1981 and the cargo is moving without any difficulty. Cargo of all persons is being accepted at the piers and is being delivered to the piers. It has been made clear to all persons that the rules apply only to containers owned or leased by steamship carriers. These are the containers in the *sole and absolute* control of the steamship carriers. The Carrier Containers' Council, an arm of management made up of all the major steamship carriers, issued the following notice:

NOTICE TO ALL CARRIERS AND
DIRECT EMPLOYERS:

In view of the collective bargaining agreement, dated May 27, 1980, and the provisions of the December 6, 1980 agreement, the industry has agreed to implement the Rules on Containers effective January 1, 1981.

In connection with the implementation of the Rules, it would be advisable for you to issue instructions to your customers as follows:

1. *The Rules on Containers apply only to containers owned or leased by ocean carriers.* Consequently, any container which actually belongs to a shipper and for which the carrier does not pay a per diem or rental charge is not subject to the Rules. In those instances where the carrier assumes the lease obligations of a shipper or pays a per diem to a shipper or to a leasing company the Rules do apply.

2. Any customer whose cargo is subject to Rule 1 of the Rules on Containers will be serviced on a fair and non-discriminatory basis if he will bring his loose cargo lots to the pier where containers and cargo space accommodations will be made available and the cargo lots will be loaded into containers by longshoremen at the waterfront terminal. Conversely, on import cargo subject to Rule 1 the containers will be unloaded by longshoremen and the individual cargo lots made available for pick-up by the customer. (emphasis supplied).

* * *

17. Thus, the issue in this proceeding does not involve, as the General Counsel argues, the general question of containerization and intermodalism. It deals only with questions relating to steamship carriers' and employers' containers. All other containers, those of railroads, those of truckers and those of shippers, are totally exempt.

* * *

18. The fact that the Rules on Containers apply only to consolidated containers, including those containers shortstopped by truckers within the 50 mile area, also means that more than 80% of all containers are moved without stuffing or stripping by ILA longshoremen. Thus the comments made in various affidavits that there is insufficient space on the various piers and terminals for longshoremen to handle each containers is preposterous. First, what possible difference does it make? The question of physical availability of space is not a criteria in any of the cases. But more importantly it should be made clear that at container piers in the Port of New York alone there now exists more than 3,000,000 square feet of modern, enclosed, heated, ventilated stuffing and stripping sheds. There is also over 2,000,000 more feet on adjacent piers and sheds—all underutilized. There are more than 1,100,000 sq. ft. of such space on the Packer Avenue and Tioga Street Terminals in Philadelphia; another 800,000 square feet is available on adjacent piers; more than 1,000,000 square feet of space is available for stripping on the container facilities in Baltimore; and the facilities in Hampton Roads, Portsmouth, Newport News, and Norfolk exceeded 1,490,000 square feet. As an expert in stuffing and stripping, having performed such functions for many, many years, I can frankly tell the Court that containerization would have to grow greatly before these ports would run out of space to handle those containers which are required to be stuffed and stripped at the pier under the Rules. It should be noted that, depending upon the commodity, from four to ten containers of 40 feet each can be stripped by a team of longshoremen (three longshoremen and a checker) in a single eight hour work day. If it were necessary, here in the Port of New York we could double the number of containers we have traditionally stuffed or stripped without running out of space. While I am not as knowledgeable as to the other ports, I am informed that the same is true in each of them.

* * *

/s/ James J. Dickman
JAMES J. DICKMAN

AFFIDAVIT OF EDWARD J. HEINE, JR.

STATE OF NEW YORK)
): ss.:
 COUNTY OF NEW YORK)

EDWARD J. HEINE, JR. being duly sworn, says:

I am a partner in the law firm of GILMARTIN, POSTER & SHAFTO, with offices at 26 Broadway, New York, New York 10004. I have been in the steamship industry for more than twenty-five years, serving in various capacities including President and Chief Executive Officer of United States Lines, Inc., an American flag steamship company presently operating a large fleet of automated container vessels. It also owns a number of breakbulk ships, most of which have been chartered to the Military Sealift Command.

I have been personally involved in the negotiations and implementation of the Rules on Containers from their very inception in 1968. Beginning in 1967 I was a member of the Labor Policy Committee of the New York Shipping Association, Inc., the organization representing steamship carriers, direct employers and other employers of waterfront labor in negotiating with the International Longshoremen's Association.

In 1968 I became a director of New York Shipping Association, Inc. and continued as a director through September 3, 1980, with the exception of a short period in the early seventies.

In addition to the above, I have been a director of JSP Agency, Inc. since the inception of that longshoremen's security program in December of 1977. This Program is intended to protect longshore employees covered by pension, welfare and GAI plans in some 36 major ports on the Atlantic and Gulf coasts from short-falls in contributions to these plans. This program was instituted primarily to protect those plans from the tremendous impact of innovation. I am therefore fully familiar with the

various studies made by the JSP Agency, Inc. as to the total tonnage moving in the Atlantic and Gulf coast ports upon which ILA deepsea longshore and other ILA craft locals are employed.

In my capacity as President and Chief Executive Officer of USI, (and prior thereto, as Executive Vice President) I was fully familiar with the development of containerization, its impact on the longshore work force, the investments made by the major carriers for new vessels and equipment, and the continuing growth of innovation. I would make clear that the early position of USL, to which I fully subscribed, was that the ILA should not resist containerization and should permit steamship carriers to use containerization without any restriction. This was the position of our Company at the inception of negotiations in 1968; it was also the unanimous position of all other steamship carriers on the Negotiating Committee at that time. The Rules on Containers were not easily agreed to, either by management or by labor. During the course of a 57-day strike in the 1968 negotiations, both sides continued to maintain their respective positions. So great was the impact of the strike on the public and the national economy that the President of the United States sent in a Presidential Mediator. This Presidential emissary, David Cole, exercised his vast persuasive powers to get the industry to agree on the Rules.

In looking back at these negotiations it appears that David Cole had in mind nothing more than a codification of practices followed in the Port of New York during the period following the initial introduction of containerization. From 1957, due to grievances, arbitration, strikes and court proceedings, the following practices or principles evolved.

A. The ILA would agree that containers containing the goods of one shipper (manufacturer's label) could move without restriction or handling by the ILA;

B. Cargo in containers which belonged either to several shippers or consignees and which was to be handled within

a port area by employees other than employees of the cargo should be handled only by the ILA at the piers;

C. Both parties understood that this would mean that most containers would move without stripping and stuffing, but there would be reserved for the ILA labor that small remaining part of the work which normally was performed by them when LTL loads of cargo were either delivered to or picked up at the pier;

D. During this period, 1957-1968, some common law interpretations began to develop with respect to what should be deemed a port area within which containers would have to be stuffed or stripped. The genesis of the term "fifty-mile-rule" developed during this period, partly as a result of the geographical make-up of the Port of New York. At that time the port extended from Point Leonardo on the south to Poughkeepsie on the north; on the east all of Long Island was considered a part of the Port, and any vessels worked in that area were normally worked by ILA labor. Similarly the New Jersey port area included Edgewater, Weehawken, Bayonne, Union City, Jersey City, Port Newark, Port Elizabeth and the various estuaries running several miles to the west were also considered a part of the Port. When the negotiations on the Rules were under way in 1968-1969 the term "fifty-miles from Columbus Circle" had already been used and re-used in the resolution of grievances and labor disputes. The significance of the term was an understanding that there had to be some reasonable geographical limit easily understood by the shipping public, within which cargo had to be brought to or delivered from the piers. There can be no question today that all of the shipping public, without exception, knows full well the meaning and significance of the term "the fifty-mile rule".

When the 1968 negotiations were completed the industry did not accept the Rules on Containers without continuing attempts to evade or avoid the Rules to the extent possible. As is known, litigation developed early, witness the Second Circuit decision in ITCT in 1970, and

the refusal of the General Counsel and Regional Director to issue complaints against the Rules in 1970. From then until 1973 the disagreements with the ILA were not as to the substantive Rules themselves, but as to whether or not carriers were living up to their agreement. While I would say that the executives of USL issued instructions that the Rules should be considered as a valid labor contract, in many cases it was brought to my attention that certain subordinate employees did seek to avoid the Rules in order to be able to satisfy various customers.

Nevertheless, the policy of USL was to live within the Rules from the beginning. The record in the Houff case, both before Judge Merhige in the United States Eastern District Court for Eastern District of Virginia, and before Judge Wagman in the secondary boycott and hot cargo proceeding, clearly indicates the instructions received by the USL employees in both Hampton Roads and Baltimore:

- (a) USL was bound by the Rules on Containers;
- (b) Any entity having an interchange agreement with USL which attempted to make USL violate the Rules would have the interchange agreement immediately cancelled;

USL cancelled the interchange agreement of Houff and Associated Transport for these reasons and neither of them were able to enter into such an agreement again for several years.

The above are only examples on record as to the position taken by USL. Our Port Managers in both Baltimore and Hampton Roads have testified that these two instances were only two of many. Similar action was taken in any port where similar conduct took place.

The significance of the above-mentioned cancellation of Interchange Agreements and the maintaining of such position for periods, not of months, but of years, indicates the extent of the control exercised by USL over its containers.

The complaints of the ILA with respect to the failure of the steamship carriers to properly live up to the commitment as set forth in the Rules on Containers led to the Dublin Rules. The meaning, the purpose of the Rules and the background are fully set forth in the various NLRB proceedings and need not be repeated here. However, it should be emphasized that these Dublin Rules did not correct or in any substantive way change the Rules on Containers, except with respect to the warehouse exception and, in that area, the Dublin Rule softened the impact of the Rules, especially in ports such as Hampton Roads and Baltimore. The real importance of the Dublin Rules was that they resulted in greater enforcement thereof to such an extent that the consolidators who were formerly able to avoid the Rules by false documentation and other similar devices were no longer able to deliver their cargo in full container loads because the steamship carriers who exercised full control over the containers would not give them empty containers for stuffing. As to the warehouse exception from 1969 through 1973 all cargo destined for warehouses, especially in the ports of Baltimore and Hampton Roads would have to be stripped at the piers before it could be delivered. It was the steamship carriers who induced the ILA to permit the development of the thirty-day warehouse rule in order to protect bona fide warehouses and to permit the containerization concept to be extended to the warehouse industry.

It must also be pointed out that the ILA in the Port of New York had permitted an informal warehouse exception to develop in that port, and full container loads were delivered without being stripped if the cargo was to be actually warehoused for a substantial period of time. The litigation which followed the Dublin Rules is fully set forth in both the Supreme Court decision and in the decision of the Court of Appeals for the District of Columbia. It should be emphasized that the period 1973 through 1980 was a time of strike and strife and unending difficulty with the ILA.

As President of USL, I witnessed two costly strikes in 1976 and 1977, which the ILA selectively aimed against the carriers. These strikes cost USL tens of millions of dollars. It is also important to note that the negotiations of 1974 resulted in no strike, because at that time Administrative Law Judge Arnold Ordman had found the Rules on Containers to be valid work preservation rules, and the ILA expected that the NLRB would adopt his findings.

When the history of the many strikes on this issue from 1957 through 1977 is reviewed, it requires no great perception or clairvoyance to forecast the result of contract re-openings which must inevitably take place if the Rules cannot be implemented.

The Rules were intended to protect a small part of the work traditionally performed by longshoremen on the piers; they were negotiated, and through costly and disruptive strikes were obtained from reluctant employers who always had the full right to control and assign such work to the longshoremen. The industry has negotiated on the work preservation issue in good faith; its judgment should be accepted by the General Counsel and it should not be required to bear the brunt of another decade of labor unrest and instability.

/s/ Edward J. Heine, Jr.
EDWARD J. HEINE, JR.

AFFIDAVIT

STATE OF NEW JERSEY

COUNTY OF BERGEN

I, Hubert Wiesenmaier, having been duly sworn state under oath as follows:

I am an International Transport Consultant with offices at 110 Green Street, New York, New York. After finishing college in Germany I was selected to participate in a fellowship program at the University of Cincinnati. In 1965, I joined the International Division of REA Express in New York, which provided international freight forwarding, customer house brokerage, and so-called NVOCC services to importers and exporters. Terminals operated by REA Express for the processing, consolidation and containerization of shipments were located in every major seaport of the United States. In 1968, I became International Regional Manager of REA Express in San Francisco, and was responsible for our services at the major West Coast ports, Seattle, San Francisco/Oakland and Los Angeles/Long Beach. At the end of 1969, I left REA to become a partner in a transportation consulting firm, with offices in New York and San Francisco. Our clients included exporters, importers, importers' associations, trucking companies, warehousing operators, NVOCC's as well as ocean carriers. In 1978, I returned to New York where I became the transportation consultant for a major footwear import association, the American Importer's Association, and a number of import and export trading firms. I issue regular transportation reports, which inform importers about ongoing developments in the transportation field. Last year, I participated in preparing testimony and testified in hearings before Congress concerning the Omnibus Maritime Bill, and the 1980 Shipping Reform Act.

In this statement I am going to describe the impact that intermodal transportation has had on the traditional work of longshoremen. I should note in this regard that I was fortunate to have been in New York—the container capital of the world—during the years when containerization emerged as the new major international transportation system; and I had the opportunity to participate in the early formulation and implementation of intermodal consolidation and container shipping programs.

Before I get into a discussion of intermodal transportation, I feel it is pertinent to define a few related terms commonly used in the shipping industry:

*Definition of Terms:**Unitization:*

The consolidation of a number of individual items into one large shipping unit for easier handling. It is also the securing or loading of one or more (large) items of cargo onto a single structure, such as a pallet.

Containerization:

Is the act of using containers for the transportation of general commodities. In a narrower sense, it is the placing of the commodities in the container in a secure manner, and the eventual removal of said commodities in an orderly manner at final destination.

Container:

Basic Definition: An enclosed, permanent, reusable non-disposable weathertight shipping conveyance. Fitted with at least one door, and capable of being handled and transported by existing (carrier-owned) equipment, both land and sea.

Container Service:

Containers are not an end in themselves but only a means to an end, namely the safe and economical trans-

port of cargo from the point of origin to final destination. The degree of container service provided or required will depend upon a number of considerations. The following types of container services are usually available:

Pier-to-Pier (CFS-CFS): Ocean carrier containerizes shipper's cargo on the loading pier, and removes cargo from the container on the arriving pier.

Pier-To-House (CFS-CY): Cargo is containerized on the loading pier of the ocean carrier. Upon termination of the movement, the container is moved off the arriving pier and delivered directly to the consignee's factory or warehouse for removal of the shipment.

House-to-Pier (CY-CFS): Shipment is containerized at the shipper's factory or warehouse, and moved overland to the ocean carrier's pier for ship loading. Upon terminating of the ocean movement, the shipment is removed from the container at the arriving pier prior to its delivery to the consignee.

House-to-House (CY-CY): Shipment is containerized at shipper's factory or warehouse and moved overland to the ocean carrier's pier for ship loading. Upon termination of the ocean movement, the container is moved off the arriving pier and delivered to the consignee's factory or warehouse for removal of the shipment from the container.

CFS (Container Freight Station): The location designated by the ocean carrier for the receiving and delivery by carrier or his authorized agent of goods to be or which have been moved in containers.

CY (Container Yard): The location designated by the ocean carrier in the port area, where the ocean carrier holds or stores containers and where containers loaded with goods are received or delivered.

Stuffing: The loading of goods into a container. Does not include loading onto a truck, rail car, or any other conveyance.

Stripping: The unloading of goods from a container. Does not include the unloading from truck, rail car, or any other conveyance.

Chassis: A wheel assembly including bogies constructed to allow the overland movement of containers.

Full Containership: All cargo spaces are fitted with vertical cells for container storage. Additional containers are carried on deck.

Ro-Ro Ship (also called Trailer Ship): Loads and discharges vehicles in the same manner as a ferry boat carrying automobiles and trucks. The term roll-on, roll-off describes this very principle of loading and discharging the vessel. A Ro-Ro ship carries containers (as well as highway trailers and other vehicles) on their own wheels/chassis.

Physical Distribution: It is the coordination of the movement of goods from the raw material state to the finished product state. Generally speaking it is the movement of raw, semi-finished or finished materials into the manufacturing, the intra-plant movement of such materials, and includes the warehousing, shipping and delivery of the finished product to the local distribution terminal, or the retailer's shelf.

Intermodal Coordinated Transport: This is normally used to describe the capability of interchange of container units among the various modes of transport. The fact that the cargo containers are of the same size in height and width, and have common handling characteristics, permits them to be transferred from trucker, to railroad, to ocean carrier, in origin-to-destination movement, without the contents of the container being touched.

NVOCC (Non-Vessel-Operating Common Carriers): Means a common carrier by water that does not operate the vessel by which its ocean transportation service is provided. A NVOCC is a shipper in his relationship with

vessel operating common carriers by water. The NVOCC must file its tariff with the Federal Maritime Commission.

Consolidator: Means a warehousing operator usually engaged in general transportation or freight forwarding services which receives less than container load shipments and places them into carrier owned containers.

LCL: It stands for Less than Container Load. Containers holding goods belonging to more than one shipper or consignee are called consolidated container loads. Such cargo is also called less than trailer load cargo (LTL).

FCL: (Means full container loads). Containers holding goods owned or controlled by one shipper or consignee.

Development of the International Intermodal Transportation System

During every phase in the history of international commerce, concepts of cargo unitization were developed by shippers and carriers to facilitate the economical, safe, and speedy transportation of goods. Traders used traditionally wooden boxes, barrels and any other custom-made containers for shipping on land or on the seas. The dimensions and weight capacities of these shipping units were usually limited by the type of handling equipment that was available at the various stages of the journey. As mechanized cargo handling systems advanced larger shipping units were developed, and could be handled efficiently with less manpower. High technology cargo handling equipment was eventually installed on vessels, as well as at the piers and at other cargo transfer points. The cargo container as we know it today is but one of the mentioned shipping units that evolved—although it is quite clear that the impact of container technology was particularly significant to transportation philosophy, and therefore the cargo handling and shipping industry. The time period during which containerization changed international shipping methods in any significant way can be

placed between 1965 and 1968. By the end of 1968 more than 50% of U.S. imports, and at least around the same percentage of general commodities exports were containerized at off pier facilities.

During this time period while working for REA Express, I was involved in some of the very early consolidation and containerization programs for major U.S. importers. Typically, if an importer had a large number of overseas suppliers he would instruct those suppliers to deliver his orders to a designated (off-dock) consolidation point abroad. The consolidator would stuff containers in a preplanned manner, *i.e.*, by port of unloading, or by distribution warehouse, or by retail store. After unloading at arrival port, containers would be delivered by the ocean carrier at the container yard. The consignee would determine whether the container should then be moved directly to a final destination/distribution point, or should be brought into an off-pier facility for temporary warehousing and/or distribution to stores or warehouses. The described type of physical distribution program met the importer's requirements to merge overseas delivery, ocean transportation and state-side handling and delivery of his goods into an overall cargo distribution plan. It assured him of accurate and timely information about goods in transit, and allowed him to exercise full control over the routing and the mixing and matching of shipments to meet market needs. The contents of containers was handled neither at the overseas port of loading, nor by longshoremen at the U.S. port of discharge; this would have served no purpose whatsoever, and would have severely hampered the shipper's transportation and distribution management.

Conversely, a significant amount of export shipments were containerized by U.S. shippers at their factories or warehouses located either inside or outside the port area. Shipments originating at various points were collected at a consolidation station and containerized into full container-loads there. At the same time shippers of LCL

cargo availed themselves of intermodal container services that are offered by consolidators/NVOCC's. These consolidated container shipments moved over the pier into the vessel without handling of its contents at the pier by longshoremen.

Shipper's Control of Transportation Services

Shippers have the undisputed right to designate the ocean carrier which will handle the movement of their goods. This designation is usually made by the party who pays the ocean freight. The shipper also decides which type of container service best meets his needs, i.e., CFS-CFS (Pier-to-Pier), or CY-CY (House-to-House) services, or a combination thereof. Service details, rates and charges, and conditions for transportation are contained in the ocean carrier's tariffs and its Ocean Bill of Lading, which is part of the tariff. Ocean carriers must closely adhere to all rules and conditions of their tariff, and are regulated by the Federal Maritime Commission. The shipper that selects to move his containerized cargoes in House-to-House (CY-CY) services will be issued an Ocean Bill of Lading that indicates the receipt by the ocean carrier of a container, "said by shipper to contain (certain quantity of certain commodities), shipper's weight, load, and count." In other words, there is an express acknowledgement by the ocean carrier for the receipt of the shipping unit only, and the acknowledgement to deliver the same shipping unit at destination. The concept of the container being considered a shipping unit is further evidenced through the fact that the carriers liability for shipper loaded containers is drastically limited. The description of the contents, the piece count, as well as the stowage of the container contents was declared by ocean carriers to be the shipper's responsibility. Under CY-CY service conditions ocean carriers have no control over the handling of the container's contents.

Ocean carrier tariff provisions state that the place of delivery for (CY-CY) House-to-House containers shall

be the carrier's designated container yard, and that consignees are required to take delivery at the container yard at the discharge port and to move the loaded container from the container yard at consignee's risk and expense.

Containers will not be stripped or stuffed by longshoremen labor unless the shipper chooses to contract for CFS/Pier services with the Ocean Carrier pursuant to the latter's tariffs. (Attached to this Affidavit are relevant portions of Tariff FMC-13 of the Continental North Atlantic Westbound Freight Conference, and Tariff FMC-41 of The North Atlantic Westbound Freight Association. They are representative of container service tariffs in major trade routes from and to Europe.)

Integrated Nature of Services Provided by Firms Offering Intermodal Container Services

These considerations therefore center not solely on cost, but also encompasses service speed, the prevention of loss and damage, and the system's overall capability to deliver goods at a pre-planned time. I would like to examine the mentioned areas more closely.

As stated earlier, the combination movement of a container by different modes of transportation, i.e. by vessel, by truck and by rail, constitutes an intermodal container movement. Inherent features of an intermodal container movement deal with the packaging of goods, the methods and reduced risks of handling, the flexibility in exchanging containers easily between modes of transportation, and the advantage of flexible routing of the freight.

Traffic Control and Service Predictability

In a finely tuned integrated transportation system the flow of traffic can be closely controlled. Shipments consigned for overseas designations are received and warehoused at a consolidator's/NVOCC's off dock facility to be mixed and matched in accordance with the shipper's

instructions. Specific orders can be assembled from inventory and consolidated into full container loads for specified overseas distribution points. A typical pier stuffing and unstuffing operation could not meet any of these requirements, since pier facilities are usually not set up to respond to the specific physical distribution requirements of individual shippers. Most pier facilities do not provide for sufficient warehousing space that can accommodate inventories of shippers with varying warehousing requirements, in contrast to the tailormade warehousing arrangements provided by off dock facilities. I am also unaware that at the piers inventory control systems are in place which would assure shippers accurate and timely receiving, inventory, and shipping reports. Without the capability to accumulate inventories, to mix and match orders for shipping and to manage cargo flow and inventories efficiently, the control of traffic provided by intermodal coordinated transport system would be lost entirely.

The same principles apply of course also to import traffic. The off-dock distribution warehouse is a major station in the intermodal transportation chain. At the distribution warehouse shipments from different overseas suppliers and/or countries are received. Inventories are promptly reported to the consigner and orders can be picked from the available inventory and consolidated for shipment to the retailer's shelf or any other ultimate designation point. Again the receiving of shipments discharged at various piers and their accumulation at one on pier facility would be impossible or at least extremely impracticable due to the lack of space on the pier. Additionally, it would be highly unlikely that one ocean carrier or terminal operator would provide sufficient warehousing or cargo assembly space to facilitate shipments that arrive via a number of sometimes competing ocean carriers.

As demonstrated above, the ocean carrier industry represents but one important link within the integrated transportation system. It is obviously not its inherent

responsibility—nor are ocean carriers and pier operators in a position to provide a full range of transportation and distribution functions that are so closely linked with container transportation.

Cargo Handling and Productivity Improvements Are Determined by the Shipping Unit

It is a common truth that with proper technology, larger lots of freight can be handled speedier, more economically, and safer than equal tonnage of small lots. This recognition led to the development of unitized shipping and containerized shipping. There is little question, therefore, that the combining of freight into larger shipping unit (pallets, bundles, containers) greatly improve cargo handling productivity at the pier and drastically reduces the risks for loss or damage to the cargo.

A reduction in the handling phases during transportation will normally lead to redesigned cargo packaging and reduced packaging costs. For example, containerized consumer products are today almost always shipped in so-called domestic packaging. Additional handling of the container contents at the pier would require a changing back to heavier, more expensive, and wasteful "export packaging." Instead of handling one shipping unit—"a container"—at the pier longshore labor would revert back to handling the many individual packages that are contained in the container. Obviously, the time necessary to handle this greatly expanded loose cargo volume would leave the most detrimental impact on the intermodal transportation system.

Impact of Containerization on the Traditional Work of Longshoremen

As in any other industry that has experienced rapidly changing technology: intermodal container operations had a significant impact on services provided by longshoremen labor at the piers. Before mechanized cargo handling and

container systems were developed, longshoremen use to handle individual pieces of freight in and out of the vessel holds, and in and around the pier's transit shed. On import cargo, the longshoremen would sling individual pieces or groups of shipping units in the holds of the ship, move the cargo to the square of the hatch, and out of the vessel's hold to a place of rest at the pier facility for loading onto a truck or rail car. Reverse process was true for export cargo. Sometimes longshoremen would load or unload the truck at the pier facility. Longshoremen are still performing the above-described traditional work for so called break bulk shipments. In addition, longshoremen stuff and strip containers at the pier if cargo has been designated for such handling by the shipper.

The need of shippers to include the ocean transportation phase into their overall physical distribution plan resulted in what is commonly described as intermodal container system. The container became the indispensable technology for both the intermodal ocean carrier as well as the cargo owner. This new transportation technology caused the re-definition of what constitutes a shipping unit which had a direct influence on the type of shipping unit longshoremen would handle at piers. In this respect ocean carrier service descriptions, tariffs, and Bill of Lading stipulations very clearly identify the container as the shipping unit in contrast to so-called loose cargo, or break bulk, or unitized lots. Even today a number of shippers choose to deliver, or to receive their shipments at the ocean carrier's pier facility in so-called pier-to-pier (CFS-CFS) services. These shipments still are handled by longshore labor. However, as seen above in an intermodal transportation system, containers are utilized in a fashion that results in the movement of containers without handling of its contents by longshoremen. Shippers usually require this intact through-movement of their containers to designated distribution facilities because a number of cargo mixing and matching functions as described above have been instituted there to which the

unloading or loading of the container is quite incidental. The function of the longshoremen to facilitate the ocean carrier's services is the handling of the shipping unit (container) out of the vessel's hold and across the pier to the point where the consignee takes delivery. The technological progress in cargo handling, and the resulting re-definition of the shipping unit in ocean shipping has resulted in the development of expanded physical distribution concepts that merged container loading or unloading with a host of other distribution functions. The traditional work of the longshoremen has consequently been modified to handling containers as shipping units across the pier, while still continuing the traditional methods of handling loose cargo. The stripping and stuffing of intermodal containers, however, has been merged into the broader concept of a fully coordinated intermodal movement of goods, and can no longer be clearly identified as a distinguishable work function at the pier.

I have read the above ten (10 pages) and swear that they are true to the best of my knowledge and belief.

/s/ Hubert Wiesenmaier
HUBERT WIESENMAIER

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Docket No. 5-CC-791, et al.

IN THE MATTER OF:

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION
AFL-CIO, ET AL.

-and-

ASSOCIATED TRANSPORT, INC., ET AL.

Place: Norfolk, Virginia

Date: Wednesday, October 15, 1975
Thursday, October 16, 1975
Friday, October 17, 1975
Wednesday, October 22, 1975
Thursday, October 23, 1975
Friday, October 24, 1975

EXCERPTS OF RECORD IN
ASSOCIATED TRANSPORT

[65] WITNESS JACK W. MACE

* * * *

Q (By Mr. Rosenstein) Mr. Mace, where are you employed, please?

A Executive secretary of the Hampton Roads Shipping Association.

Q And how long have you served in that capacity?

A Since the Hampton Roads Shipping Association was organized in 1971.

* * * *

[106] Q (By Mr. Lambos) Mr. Mace, would you please tell the Court in your own words what the practice was before the Dublin rules with respect to a container destined to go to a warehouse within the port of Hampton Roads?

A If such container did not go to a consignee's facility within a 50-mile radius—a beneficial owner's facility within a 50-mile radius, then, it was termed a stripper. It had to be stripped.

[107] But if the container was destined to go to the beneficial owner's facility within a 50-mile radius, then, it was not a stripper. It did not have to be stripped.

But if the container were to go to a consolidator or a broker or a forwarder's facility or what-have-you, then, the container had to be stripped at the pier by ILA labor.

Q Do you know of any exception to what you have just testified to from the inception of the rules?

A No exceptions prior to the Dublin rules.

Q Now, what exception did the Dublin rules make with respect to shippers loads?

A Dublin rules brought in the 30-day warehouse rule applicable only to import cargo, and that said, cargo in its normal course of business may be sent to a public

warehouse, stay there for a minimum of 30 days and exempt from stripping by ILA labor at the pier.

* * *

[115] Q (By Mr. Lambos) Mr. Mace, the Hampton Roads Shipping Association is one of the constituent members of CONASA, is it not?

A That is correct.

Q And you as executive secretary of the Hampton Roads Shipping Association attend the various meetings of CONASA?

A I have attended all of the meetings except one, yes.

Q You have also attended meetings of the CONASA-ILA Container Committee, which is provided for by the rules on containers?

A That is correct.

Q Have you so attended from the beginning of the formation of CONASA in 1971 to the present time?

A I have.

* * *

[152] MR. AUTEN: Your Honor, Mr. Lambos's last point is addressed to the 1974 contract?

MR. LAMBOS: And the 1968 contract and the 1971 contract.

MR. AUTEN: Do they all contain this provision?

MR. LAMBOS: No. What you will see is that improper documentation has always been wrong. '68 said it very straightforwardly; in '71 it said it straightforwardly; and in '74, they beefed it up so that they would require a little more from us. Some of that came out of Dublin in 1973. So you will—We will show you in our case how these rules evolved and why we have had to have changes because of these evasions by truckers and others.

* * *

[153] rules. I'm not talking about who should do it. I'm not talking about who may be in violation of the rules. I want to know if anyone other than these motor carriers

stripped full container loads destined to a single consignee.

A I'm sure that the ILA from time to time has stripped a full container load.

Q Do you know that as a fact?

A If they were ordered to do so, yes.

Q Now, why would they have done so, sir?

A Well, for any number of reasons. The option of the consignee. Maybe the goods were going to Georgia and he found a local consumer for the goods and he wanted the goods stripped at the pier for local distribution rather than distribution in Georgia.

* * *

[167] WITNESS CLETUS E. HOUFF

* * *

Q And where are you employed, sir?

A At Houff Transfer, with headquarters in that city.

Q And what is your capacity?

A President.

Q And what is the business of Houff Transfer?

A Common carrier.

* * *

[169] Q Would you describe how you utilize a container?

A We pick the containers up from the piers, take them to our terminals, weigh them; and, if they are overweight, they are transferred to the trailers of Houff Transfer. In some cases, they may not be overweight and also be transferred to the trailers of Houff Transfer.

Q Okay. Now, let's go back and will you define for me what an LCL load is, please?

A An LCL load is a less than—We term it LTL, less than truckload; and I guess an LCL is less than container load. It means it's a shipment that will not fill the entire vehicle in which it is loaded on.

Q Now, are you familiar with the term, shippers load?

A Yes.

Q Would you describe what a shippers load is, please?

A A shippers load is a load that is loaded on a container or trailer by the shipper and tendered to some carrier for transportation.

Q What are the size of the containers that you would pick up at the pier?

A 20-foot and 40-foot lengths. Some 35's, but mostly 20- and 40-foot.

* * * *

[173] Q And will you describe how motor transport carriers like Houff would utilize the bill of lading?

A A bill of lading is issued by the shipper covering whatever shipment he may be shipping at the time, and it is a document by which the shipment is received; and, from this bill of lading, a freight bill is made by Houff Transfer providing essentially the same information that is covered on the bill of lading.

* * * *

Q (By Mr. Rosenstein) Now, I direct your attention to the Baltimore port area, and I ask you when did containerization begin.

A It began, to my knowledge, around 1965.

Q That's in the Baltimore area?

A In the Baltimore area.

Q Now, you have already defined a full shippers load. I want you to tell me in 1965 what Houff Transfer did when they [174] picked up a full shippers load at the pier area in Baltimore.

A We were requested by either an agent of Baltimore or perhaps a consignee itself to go to pier so-and-so and contact whatever steamship the company may have the container and pick up the same and deliver it—deliver the merchandise to the consignee.

Q Now, what is the distance in miles from the pier area that most of your shipments are destined?

A It would range from a minimum of 150 miles to a maximum of 450 miles.

Q When you picked up a full shippers load at the pier, was the seal intact?

A In most cases.

Q Had the full shippers loads been stripped by deep-sea ILA labor at the pier?

A No.

Q Directing your attention to the Norfolk area, when did containerization commence?

A At about the same time, as I recollect.

Q Will you describe, in the Norfolk area, how you picked up a full shippers load at the pier area?

A In the Norfolk area, the brokers would issue the instructions. In some cases,—and I'm talking about 1965—we would be directed by the consignee to contact whatever broker may be handling the shipment. And once the contact [175] was made, you may have had a document to carry to the pier or it may have been done by a telephone conversation, to go to the pier and get container so-and-so; and there the documents would be issued to you at the pier.

Q Now, when you picked up a container of a full shippers load at the pier in Norfolk, was the seal intact?

A In the majority of the cases.

Q All right. Would you describe for me when the seal would not be intact?

A Occasionally, the seal may be broken by customs; and, on some occasions, it may have gotten broken in transit. It is a policy to check the seal numbers before the containers were picked up.

Q Were containers of full shippers loads in 1965 stripped at the pier by deepsea ILA labor?

A No.

Q Now, let's go to the year 1966 for both Baltimore and Norfolk. Was the procedure the same as you described for 1965?

A Yes.

Q Were the containers stripped at the pier by deepsea ILA labor?

A No.

Q And you're talking about full shippers loads?

A Correct.

Q In 1957, in Baltimore and Norfolk, were the containers [176] stripped at the pier—full shipper load containers by deepsea ILA labor?

A No.

Q In 1968, for both Baltimore and Norfolk, were the containers stripped at the pier—full shippers loads—by deepsea ILA labor?

A No.

Q In 1969, the same question.

A No.

Q In 1970?

A No.

Q 1971?

A No.

Q 1972

A No.

Q 1973?

A No.

Q 1974

A No.

Q 1975?

A No.

Q Is there any method in which a consignee—and that's the beneficial owner—can require a container to go through intact to the final destination?

A Yes.

[177] Q How?

A By requesting exclusive use of the equipment.

Q What is exclusive use of equipment?

A It means equipment will move through with whatever merchandise that may be on it without anything being added on to it and it must be expedited. In other words, once you receive it, it must keep moving.

Q From 1965 to the present date, has Houff Transfer ever had exclusive use of equipment requested?

A Certainly not over two or three times, if ever. I recall one shipment that may have been a container. I'm not real sure; but it's very rare that that situation, because there is a penalty assessed to the consignee and higher transportation costs.

Q Directing your attention to February 19, 1974, I ask you whether or not you picked up some containers on that date.

A Yes.

Q Where did you pick them up and what containers did you pick up?

A I picked them up from the Dundalk Marine Terminals from United States Lines destined to—

Q How many containers?

A Two.

Q Did you pick up any other containers?

A I'm not sure, on that particular date.

[178] Q Did you pick up any containers from Lavino Shipping?

A Yes.

Q Was that in that same general time frame?

A Yes.

Q What type of containers were these three containers which you picked up at the pier area?

A 20-foot containers.

Q And what kind of loads did they contain?

A Two containers from United States Lines contained silicone with the total weight of 78,000 pounds on the two containers. The container from Lavino was drums of picoline with the weight of about 38,000 pounds, 80 drums.

Q Were these containers described as full shippers loads?

A Yes.

Q All right. What did you do from the point that the broker told you that you were going to pick up these containers, that you had been designated as the carrier?

A Picked the containers up from the steamship com-

panies, took them to the Baltimore terminal, transferred them to Houff trailers.

Q What specific reasons did you use to open the seal and strip those containers?

A The number one reason was they were overweight; they couldn't be legally pulled over the highways of Virginia and West Virginia.

[179] The number two reason is—

* * *

Q (By Mr. Rosenstein) I show you what has been marked for identification as General Counsel's Exhibit Number 17 and ask you if you can identify what that is.

A Those are the weight laws applicable in the State of Virginia.

Q Now, do you want to explain those weight laws in relationship to the containers that you picked up at the Baltimore pier area and stripped at your terminal?

A The containers which we picked up in Baltimore were all three 20-foot containers; and they show the distance between the first and rear axle and the maximum weight allowed under these allocations.

Q So what determination did you make with respect to that chart on the three containers which you picked up?

A That they were all overweight.

Q And, therefore, what did you do?

A We unloaded them and transferred them to Houff trailers.

Q And is this to comply with the State of Virginia's rules and regulations on motor transport?

A Yes.

* * *

[182] Q (By Mr. Rosenstein) Now, you said the first reason was as a result of the distribution of load for stripping a container. Would you continue and tell me if there were any other reasons that you determined it necessary to strip the three containers?

A The second reason was that, being a 20-foot trailer or 20-foot container loaded to the roof, going through the

mountains of West Virginia, it's a very unsafe operation, particularly in the wintertime. U.S. Highway 60, which is the highway that Alloy is located on, is one of the most obsolete and mountainous roads in the Continental United States.

The third reason is that when we unloaded the container and we turned it back to the steamship lines, we saved the rental cost of the container.

[183] Q Now, the rental cost, is that under your equipment interchange agreement which was introduced as General Counsel's Exhibit 15?

A It is.

Q And do you pay the steamship line for the use of those containers?

A Yes.

Q Those containers are owned by whom?

A They pay the steamship lines for them. Some of them own them and some of them lease them from the container people.

Q Houff does not own the container that you pick up at the pier?

A Under no conditions.

* * *

[187] Q I show you what has been marked as General Counsel's Exhibit 15, the equipment interchange agreement. I ask you if there is anything in the equipment interchange agreement between Houff and U.S. Lines that precludes you from stripping a full shippers load at your facility?

A No.

Q Mr. Houff, are there any other documents which you utilize to pick up a full shipper load at the pier area?

A No.

Q So the bill of lading and the equipment interchange agreement and the delivery order are the documents that you utilize?

A That's correct.

Q Is there any other document that you have knowledge of that specifically precludes you to strip full shippers loads at your facility?

A Not to my knowledge.

* * *

[188] Q (By Mr. Auten) Mr. Houff, in your testimony, you went into reasons why you might strip containers containing full shippers loads going to a single consignee. As I recall, [189] three of them, the weight rules imposed by the states was the first; the second was safety reasons in addition to the weight rules; and the third was the economy, specifically having to do with the rental charge, which was charged by the shipping company.

Now, in addition to those reasons, are there any other operational factors that might suggest to you that a container be stripped?

A Yes. On some containers, the fifth wheel pin located on the chassis will not prevent or will not permit the use of a tandem axle tractor in the movement of that container. In other words, the rear wheels will hit the chassis and, therefore, you are not able to use a tandem axle tractor. If you did move the 20-foot container, there's always the problem of trying the load the thing back, because you only have half the amount of floor space in that that you would have in regular—or less than half the floor space that you would have in regular common carrier equipment, or the equipment of Houff Transfer.

If you are not able to load it back and it has to sit around for days or weeks, it's costing money. 'Again, it comes back to the cost of the—

Q Just for purposes of clarity, describe what you mean by loading back.

A In other words, if it would be pulled to the consignee's [190] destination—and we will use Alloy, West Virginia as an example—and then get that equipment loaded back into the Baltimore area, it's practically impossible to get a pay load on it. In other words, even if

you did load it, it would move for about half of the revenue that should have been on it; and if you only move it for about half of the revenue, then, it's a losing proposition.

* * *

[203] Q Now, could you tell us, on the basis of General Counsel's Exhibit 17, what weights you found to prohibit the movement of these two containers to West Virginia?

A The distance in feet between the extreme of any group of axles—which means the front axle and the rear axle—that distance was in the range of 25 feet, which allowed a gross weight, including the equipment, of 53,000 pounds. The tractor itself, a tandem axle tractor weighs approximately 16,000 pounds. The container and the chassis will vary. It varies anywhere from ten to twelve thousand pounds, depending on the type chassis. So you add the weight of the tractor, 16,000, and we will assume 10,000 for the container, which is 26,000 and then add—well, if you split it in half, it would be 39,000 pounds—and add those two together, and that would give you a gross weight of 60-couple thousand [204] pounds.

Q Which is over the limit of 53,000 pounds?

A Right.

Q But so is the movement made on Trailer 645, is it not?

A It is not. Because on Trailer 645, your distance goes up to some 40-feet between your front axle and your rear axle.

Q Well, if I added 41,000 pounds to some 26,000 pounds, how much would that be?

A It would be 67,000 pounds.

Q And what was your distance in feet between the extremes of the axles be?

A It would be 40-couple feet, depending on where you set your rear wheels at.

Q And that would be about as heavy a load that you could get, is it not?

A You could add another 5,000 pounds and it would still be legal.

Q How about this trailer? (indicating).

A The same thing.

Q Well, this 78,810 is the contents of these two containers, isn't it?

A That's correct.

Q And could you tell us what the weight load the Trailer 407 carried?

[205] A The weight load of the calcium silicium was 37,390 pounds; and I am sure that we had another five or six thousand pounds of miscellaneous freight on the rear of this trailer, bringing it on up into the 40,000 pound pay load, because that's the figure that we strive to load on the trailers going into West Virginia.

* * *

[213] Q In Norfolk, you indicated that you have five employees.

A Right.

Q Could you tell us how many of those employees are supervisory and how many actually perform loading or unloading of container work?

A One supervisor has to do the loading and unloading.

Q Do any of these remaining four employees perform office work?

A One may do a little on occasion; but his primary function is to load and unload. In addition to that, we fill in with over-the-road men, helping them to do loading and unloading.

Q How many manhours does it take to load a container? In other words, take the cargo out of the 20-foot steamship box and put it into one of your own boxes.

A From a half to an hour.

Q From a half an hour to an hour?

A Right.

Q With how many individuals working?

A One.

Q One individual?

A Right.

* * *

[230] Q And have you served in every negotiation since 1954 to the present time?

A Yes, I have.

Q Now, first, I would like to get to what's just been asked you; and I will go into the contract here. You were asked whether or not on full shippers loads the ILA stripped full shippers loads on a house to house status; and I think you stated that the ILA did not.

A Right.

Q Right. Now, when does the container cease to have the house to house status—or a full shippers load cease to have the house to house status under the contract—or when would the ILA be entitled to strip this load?

A When a full shippers load does not go to the beneficial owner or consignee of the cargo at his own installation and is off-loaded by his own employees, then, it loses its identity as a full shippers load.

* * *

[235] WITNESS OTIS LANDIS

* * *

Q (By Mr. Rosenstein) Mr. Landis, would you give your name and address for the record, please?

A 5718 Bartee Street, Norfolk, Virginia.

Q Where are you employed?

A Teamsters Local Union 822.

Q And do you hold a position in that organization?

A Secretary-treasurer.

Q And how long have you held that position?

A Approximately two years.

Q Prior to holding that position, what type of employment were you involved in?

A Truck driver.

Q And for whom did you drive a truck?

A Hemingway Freight Lines, Hennis Freight Lines, Preston Trucking Company; quite a few.

* * *

[238] Q Now, have you ever observed containers being stripped at motor transport carriers that contained full shippers loads?

A Well, I have observed containers being stripped. As far as whether it was a full shippers load or not, I really couldn't tell you.

Q Do you know or have knowledge whether Teamster employees of the aforementioned companies you have described when the need arises have stripped full shipper load containers?

A Yes.

Q All right. And they would be stripped where?

A If the trucking strips, it is done at his terminal.

Q Now, will you tell me the reasons that a trucker, when the need arises, would strip a full shippers load by Teamster employees?

A Well, there would be numerous reasons. One of them would be—It's primarily 20-footers, which they are a very cumbersome trailer for a freight company to try to operate with. They are small. And I think there was some testimony before about the bridge law as opposed to weight limits. You can take two 20-footers. If both of them would have, say, in excess of 45,000 pounds between the two of them, you can consolidate them into one trailer, one 40-or 45-footer freight trailer and take it where it's going, deliver it. Then, [239] you've got a trailer there and they can reload back.

Q Okay. Are there any other reasons that motor transport carriers would strip a container?

A Well, from my experience as a driver and as a business agent, now, in getting complaints from the drivers about containers, they tell me that they are hard to pull, they handle bad, the tires may not be maintained at what they think are proper standards, they have a lot of light problems with them.

And on the 20-footers, with the twin-screw tractor, the three-axle tractor, you do have the problem of the rear tires getting into the landing gear and the chassis frames.

Q Would you explain that?

A Well, when the tractor turns, the trailer—the landing gear, the stand that it stands on when it's not being pulled, these are right up against the back of the tractor; and when you turn, they dig into the tires.

Q How long have Teamster employees been stripping full shipper loads at the employer members of Tidewater?

A I have seen containers stripped and loaded in and out of Norfolk since they have been running containers.

Q Do you recall the approximate year when that first started?

A Oh, some of them were pulling them in the middle-'60s.

Q Now, is there any way, to your knowledge, that a [240] consignee can require a 20-foot container to go intact to the manifested destination?

A Where the consignee would require it?

Q Consignee, broker—

A Shipper or whatever?

Q Right.

A The only thing I could come up with right off would be on an exclusive use basis.

Q What's exclusive use mean?

A That's where the shipper or receiver, one or the other—whoever is paying the freight—pays a premium for—he gets exclusive use of the trailer. Exactly what it says.

Q I show you what has been introduced into evidence as General Counsel's Exhibit 18 and ask you whether you have even seen a document similar to that.

A I've seen documents similar, yes.

Q All right. And what is that document?

A It's a delivery order, a pickup order for what appears to be a container or two containers.

Q From your experience in dealing with delivery orders, is there anything on that delivery order which precludes the motor transport carrier from stripping a full shippers load?

A I see nothing that would preclude it.

* * *

[291] WITNESS JOHN EVERETT

* * *

[292] Q And where are you employed, sir?

A Everett Express, Incorporated.

Q And in what capacity do you serve with that company?

A President and general manager.

Q And is your corporation a member of the Tidewater Motor Truck Association?

A Yes, sir.

Q Now, can you tell me when containers first appeared in the Norfolk area?

A I believe it was around 1965. Maybe some before; but I believe it was around '65.

Q Now, would you define for me what your understanding is of a full shippers load?

A Yes, sir. It is a shipment that is loaded on a container, truck or anything, for shipment or transport or whatever, to the consignee.

Q Could you repeat that? I don't think I got all of it.

A I said it is a shipment that is being transported on a trailer, container or whatever you choose to move it on, from the shipper to the consignee.

Q Now, as a motor transport carrier, is your corporation [293] ever selected to pick up full container loads?

A Yes.

Q Tell me how you would be selected to pick up a full container load.

A Well, we would be contacted by a customer who would give us instructions that he would have a load or,

if it is containers we are speaking of or whatever, have his broker to contact us and give us the necessary documents for us to pick it up with.

Q All right. Now, what type of documents are you referring to?

A The delivery order.

Q All right. I show you—

A Bill of lading.

Q All right. I show you what has been introduced into evidence as General Counsel's Exhibit 18, and I ask you if you can identify what that is.

A This is a delivery order.

Q Is that the same type of delivery order that Everett Express would use?

A Yes.

Q Now, what does that delivery order provide for specifically?

A The primary purpose of the delivery order is to give the carrier authority to go to the shipper and pick up the [294] freight.

Q So when you say the carrier, are you referring to Everett Express?

A Well, Everett Express, if he is the carrier, yes.

Q And you go down to the pier and what do you do with the delivery order?

A The delivery order, you give it to whoever is in charge of releasing the shipment to you.

Q Would a shipper be, for instance, U. S. Lines?

A It's possible.

Q And you would then deliver that delivery order to the shipper, is that correct?

A Yes, sir.

Q All right. And then, what would happen?

A Well, he would in turn turn the shipment over to us.

Q When he turns the shipment over to you, is the trailer intact—or is the container intact?

A If it is a container, yes, sir, it is in tact; and, of course, we have to go through an inspection line and

inspect it, check it over whether it's road-worthy or whatever and anything that might be wrong with it, have it corrected right then.

Q And this would be with respect to a full shippers load, is that correct?

A Yes, sir.

[295] Q Now, you mentioned a bill of lading. I show you Exhibit 16—General Counsel's Exhibit 16 and ask you if that's the uniform bill of lading.

A Yes, sir, this is the bill of lading.

Q All right. Now, what contractual relationship is involved in the bill of lading, what parties?

A Well, the bill of lading primarily covers the shipper—between the shipper and the carrier.

Q Okay. Now, when you say shipper and carrier, who do you mean?

A When I say carrier, I'm speaking of a truck line or a railroad or Everett Express if he's the principle or the consignee whoever the shipment is going to or consigned to.

Q Assuming you pick up a full shippers load at the pier area, what do you do with it, then?

A Well, of course, from there it is brought to our terminal and billed and from there it is sent out for delivery.

Q Now, have there been occasions when you have for your own convenience opened up a container?

A Yes, sir.

Q All right. For what reasons would you open up a container?

A Well, it could be several reasons. The carrier has the right to inspect any load, so we might want to inspect it.

Q And why would you do that?

[296] A Well, if we have any doubt at all that there might be something wrong with the shipment, or it might not be properly—It might say that this is a load of coffee, and it could have rice in the trailer. Of course, this

would determine your rate; the rate is determined or classified on different items. A lot of times and mainly, if we have a trailer or a container, for example, and we have—Well, let's use Wilson, North Carolina, as an example. If this load is going into the area of Wilson, North Carolina, and we had a load down there to come back say on another steamship company container and we had to take this container and empty it and then load it, this is not profitable for us. If we took the loaded one down there and bring it back empty, that's still not profitable. So we would transfer the load maybe from one container to another in order to do good business, in other words.

Q Now, what size normally are the full shipper load containers that you pick up at the pier area?

A Well, the size of the container?

Q Yes.

A We have some 20's and some 40's.

Q What size container would you transfer the contents into?

A Well, primarily the 20's.

Q What size would you transfer it into of your own equipment?

[297] A Well, it could go into a 40-foot trailer or 45 or whatever.

Q Now, have you ever had an occasion to call a consignee who owns the goods?

A Yes, sir, I've done this quite often.

Q Now, why would you call the consignee who owns the goods?

A Well, we believe it's a good policy to ask the customer, even though they are getting the container which is supposed to be a house to house movement, because sometimes a customer may not want it to come through house to house. So we will call him and ask him if he minds if we transfer his load; and we have never had one to refuse us, yet.

Q Now, you said that containers started in the Norfolk area in 1965, is that correct?

A I would say roughly about that time, yes.

Q Now, between 1965 and the present date, has Everett Express operated with respect to full shippers loads in any different manner?

A No, sir.

Q So when the need arises you strip that container at your facility?

A Yes, sir.

* * *

[300] Q (By Mr. Auten) Mr. Everett, if you went to the dock and picked up a container that you weighed at your terminal and discovered that it was overloaded, would you strip that container at your terminal and put it into your trailer or would you take it back and tell United States Lines that you weren't going to handle it because it was overweight?

A I imagine I—In fact, I'm sure what we would do is that we would off-load it onto something else and take the additional freight and put it maybe on two trailers.

* * *

[311] WITNESS EDWARD G. BOCHERT

* * *

Q And where are you employed, sir?

A Associated Transport, Virginia Beach, Virginia.

Q And in what capacity?

A I'm the manager.

Q And how long have you served in that capacity?

A A little over three years.

Q 1972?

A Yes.

Q Now, would you explain briefly the business of Associated Transport, please?

A Yes, sir, we are Class A common motor carrier of cargo, freight engaged in interstate commerce. And intra-state commerce, also.

* * *

[313] Q Mr. Bochert, would you describe what a full shippers load is?

A Yes, sir, it's a truckload freight on a trailer consigned to one consignee and one shipper.

Q Now, has Associated ever had occasions to pick up full shipper loads at the Hampton Roads pier area?

A We certainly have.

Q Will you describe the procedure Associated follows in order to pick up a container?

A Yes, sir. We are issued a delivery order or bill of lading from a broker either in the town of Norfolk or from an outside source through the mail. Upon receiving this, we note on the delivery order that we, of course, have been specified by a shipper, a consignee, as the carrier to transport the goods from Norfolk to wherever. The delivery order also spells out where the container in this case is at and at which pier, as I mentioned before.

We check with the pier offices down at the particular pier, say, for instance at the Maritime Terminals, asking the responsible party down at the pier office, is container such-and-such released for shipment. If we are advised that [314] this has happened, we send the local driver with a local tractor to the pier area with his delivery order. He then, in turn, reports to the particular party involved, at whatever steamship line it may be, shows the document proving that we are the carrier of record. There he is instructed the proximity at the terminal where he can find this container. He then goes looking for the container.

Upon finding the container by number, he is checking the number or for the number, he takes it through the steamship's checkout line that they have, where the trailer is checked for DOT and ICC compliance for lights, tires and what-have-you.

* * *

Q All right. Would you continue please?

A Yes. Once this is accomplished and the container is checked by eyesight by my driver as well as the person

at the pier responsible, U. S. Lines personnel or whatever, it is then placed off to the side. The driver goes in and signs an equipment interchange, where Associated Transport signs for [315] this container and has accepted the responsibility of the container, and this interchange agreement between, say in this case or my case, U. S. Lines with Associated.

He then obtains a pass to exit the premises, the pier or whatever, the terminal area; and he brings the trailer back to my terminal.

Q Now, you mentioned a delivery order. I show you General Counsel's Exhibit 18 and ask you if that is the delivery order.

A Yes, sir, it is.

Q Now, what does the delivery order specifically cover for you to obtain?

A Well, the delivery order would cover the letter, as I refer to it, specifying, like I said, us as the carrier. The consignee's name would appear on this. A lot of times in a lot of cases, who is responsible for the charges that we will be billing for the movement of this particular freight.

Q Could you speak up a little louder, please?

A Yes, sir.

Do you want me to repeat that?

Q No, that's all right. On the delivery order, does that enable you to pick up the cargo itself?

A Yes, it does.

Q Now, I refer you to General Counsel's Exhibit 16 and ask you what that is.

A This is a uniform straight bill of lading.

[316] Q All right. Now, what parties would be subject to the uniform straight bill of lading?

A The shipper, the consignee and the motor carrier.

Q Now, when you are talking about the shipper, who do you mean?

A The party that originates the shipment.

Q That would not be U. S. Lines?

A No, sir.

Q And the motor transport carrier is Associated?

A Right.

Q And the consignee is the beneficial owner of the goods?

A That's right.

Q Now, I show you what has been identified as General Counsel's Exhibit 44, and I ask you if you can identify that document.

A Yes, sir, this is or was the existing contract between United States Lines and Associated Transport.

Q All right. Now, what type of contract?

A An equipment interchange contract.

Q All right. Now, what was the date that that agreement was negotiated?

A May 6, 1969.

Q All right. Now, what does the equipment interchange agreement provide?

A It's a contract between the steamship line and the motor [317] carrier to interchange equipment.

Q Did you have any other agreements with respect to the interchange of equipment with U. S. Lines in existence in March of 1969?

A Not to my knowledge, no.

Q You arrived in 1973, is that correct?

A '72.

Q Do you know of any other agreement that you utilized to exchange equipment with U. S. Lines, other than that document?

A No, sir.

* * *

Q (By Mr. Rosenstein) Now, I direct your attention to September 24, 1974, and ask you whether you picked up any containers on that date.

A Yes, sir, I did.

[319] Q And these were all destined to a point more than 50 miles from the port area?

A That's correct.

Q Now, you said that you made a determination based on the bill of lading to strip the containers. What entered into your determination to strip the containers?

A Well, for one, the merchandise was that of such that it would not be easily damaged, it wouldn't be pilfered, and also they were large cartons, bulky cartons, but very light cartons, though.

And, of course, the economics of the whole thing with my own equipment sitting in my yard, why take on leased equipment.

Q Well, is there a charge you would have to pay on the leased equipment?

A Yes, sir, there is.

Q How does that work, and who do you pay the charge to?

A It is per diem charges that we pay to United States Lines for lease of their equipment while in our possession.

Q Do you recall any other reasons that you determined to strip the eight containers in question?

A As I recall, one of them was overloaded. We then, of course, instead of going to the broker saying we have a problem, we have an overloaded container, we would have to take it to [320] the pier and whatever, I just adjusted the load on my own equipment, the difference being the containers are much heavier than our own trailers.

Q Do you ever contact the consignee prior to stripping the containers?

A No, sir.

Q Does the broker require you to contact the consignee?

A No, sir.

Q Is there any restriction in the bill of lading which precludes you from stripping a full shippers load at your facility?

A No, there is not.

Q Is there any restriction in the delivery order which precludes you from stripping a shippers load at your facility?

A No, sir.

Q Referring to your equipment interchange agreement that was in existence in September of '74, was there any restriction that precluded you from stripping full shippers loads at your facility contained in that document?

A No, sir.

Q Now, is there any way in which a consignee could require that the 20-foot container remain intact and be delivered as a 20-foot container?

A Yes, there is.

Q And what is that?

[321] A That's by requesting exclusive use of the vehicle.

Q Now, what does that mean?

A Well, that means that the said container will move in tact as it arrived this country to the destination.

Q Was exclusive use of equipment requested on the eight containers that were picked up from U.S. Lines on September 24, 1974?

A No, sir, there was not.

Q Now, is there any reason why Associated would not want the full shippers loads stripped at the pier by deepsea ILA labor?

A Is there any reason why not?

Q Yes. Why would Associated not want that to happen?

A Yes, sir. Because when I am tendered a truckload lot of freight on a United States Lines container, we rate our bills—we come up with the dollar figures. Let me use a hypothetical \$400.00 figure. We generate revenue, say, on this particular container \$400.00. If this container were to be handled by deepsea ILA labor, their handling charges would be paid by myself, by a shipper, by a consignee. In other words, an added cost.

* * * *

[379] WITNESS ROBERT W. McCLESKEY

* * *

Q And where are you employed, sir?

A Carolina Freight Carriers Corporation.

Q And how long have you been employed there?

A Approximately seven years.

Q And in what capacity do you serve at Carolina Freight?

A District manager of the Norfolk office.

Q And how long have you served in that capacity?

[380] A Five years.

Q Mr. McCleskey, would you define what a full shippers load is?

A A full shippers load would be a load loaded by one shipper going to one consignee that would fill a trailer either cube-wise or weight-wise.

Q Has Carolina Freight ever had an occasion to pick up a full shippers load at the Hampton Roads pier area?

A Yes, sir.

Q Would you describe how you go about picking up a full shippers load?

A Well, we receive a bill of lading, delivery order usually from a broker in most cases and give the delivery order to a driver who takes it to the pier. You see the proper people in the office down there. They tell you where the container is and the driver goes and finds it and hooks up to it. He will make a preliminary check, pull it through the interchange line. If everything is okay, leave the interchange line, receive a pass on it, and pull it out the gate.

Q When you pick up the full shippers load at the pier, is that container in tact?

A Yes.

Q Has that container, to your knowledge, been stripped at the pier by deepsea ILA labor?

A Not to my knowledge.

* * *

[381] Q Now, when you get that delivery order, do you call the beneficial owner-consignee?

A Not normally, no, sir.

Q So do you then pull it from the pier area some place after you pick it up?

A We always take it to my terminal with a local driver.

Q Now, I show you General Counsel's Exhibit 16 and ask you if that is a bill of lading.

A Yes, sir, that's a blank bill of lading.

Q And who is that contract between?

[382] A Well, that contract is between myself, the shipper and the consignee when I get to the consignee with it.

Q Does that cover the cargo while it's in transportation to the beneficial owner?

A Yes, sir.

Q Now, from the point that you pulled the full shippers load away from the pier, where do you go?

A To my terminal in Virginia Beach.

Q All right. It that within a 50-mile radius of the port area?

A Yes, sir.

Q Why do you pull it to your terminal?

A Well, we pull it in there and it has to be—we have to cut another bill and it has to be manifested, it has to be hooked to a road truck and given to a road driver.

Q Now, have there been occasions when, for your own convenience, you have opened that trailer and redistributed the cargo?

A Yes, sir.

Q Tell me the purposes that you would do this?

A Normally, there are several reasons. We do it—The main reason is to cut off per diem and get rid of this box that we have no use for in our system. Most of the time, I have my own equipment on the yard empty that I can utilize. We have occasions when road trucks will not hook to these [383] units, the same problems that

were mentioned earlier about fifth wheel settings, king pin settings.

Q Would you go through these and also describe what you mean when you said the trailer would not hook onto the equipment that you pulled from the pier to your facility.

A Well, we have a number of tractors—In fact, a majority of our road tractors do not have a sliding fifth wheel. There are many containers, 40's and 20's alike, that have the king pin which hooks into the fifth wheel set farther back underneath the trailer than most trailers. Consequently, when you hook up to it, the frame of your tractor or the tires of your tractor will hit the landing gear or the frame of the trailer. Some of them you are able to pull, but you ruin two tires. Some of them you are simply not able to pull at all; they will not go. You cannot make a turn with them in any way.

As far as the others, we would like to strip them on occasions to cut off the per diem rate. My trailers, we have nothing shorter than a 45-foot trailer or road trailer, nothing shorter than a 13-foot high trailer; and my smallest trailer is bigger than the biggest container around.

Q Now, you said that you pulled the original container from the pier area. Who owns that original container?

A Normally, the steamship line unless it's a leased box.

Q Now, I direct your attention to June of 1975 and ask [384] whether anything unusual happened to Carolina Freight.

A Well, probably a lot of things. One that I can think of, we were—we picked up a container belonging to NYK Lines.

Q What type of container was this?

A It was a 40-foot container.

Q Was it a full shippers load container?

A It was billed as such, yes.

Q And what did you do with it?

A I stripped it.

Q You brought it back to your—

A I brought it back to my terminal, opened the doors and stripped it.

Q Why did you strip it?

A On that particular day, we had—if memory serves me, that container had 26,000 pounds on it. I had two trailers of my own at my warehouse which had loads for Rocky Mount, North Carolina, which is a break bulk terminal. By stripping this container, I loaded both of my trailers which ended up with 42,000 pounds, approximately, on them and the container, of course, was empty. What I accomplished was running two of my trailers with capacity loads on them as opposed to running those two with less than capacity loads and the container which would have been a third vehicle. I saved a trip. And this is the reason that we stripped it.

* * *

[386] Q Mr. McCleskey, at what point did you learn that the steamship line and the International Longshoremen's Association felt that there was a violation of their contract if a full shippers load was stripped at your facility?

A Sometime in 1970, the latter part after October when I came in. Shortly after I came in.

* * *

[392] WITNESS M. L. CHADWICK

* * *

Q Where are you employed, sir?

A Hennis Freight Lines, Portsmouth.

Q And in what capacity?

A Assistant manager.

Q How long have you served in that capacity?

A Since September of '72.

Q How long have you been employed at Hennis Freight?

A The same length of time.

Q Is Hennis Freight a member of the Tidewater Motor Truck Association?

[393] A Yes.

Q Mr. Chadwick, would you define what a full shippers load is?

A It is a load from one consignor, or shipper, to a consignee which is a full load.

Q Now, has Hennis Freight ever had an occasion to pick up a full shippers load at the pier area?

A Yes.

Q Would you describe the procedures that you follow when picking up a full shippers load?

A Well, we receive instructions from a broker by way of a delivery order and a bill of lading instructing us to go down to the pier and pick up a particular shipment; and we so do, by going through the process of going to the pier offices and checking the unit out and so forth, and sign the interchange agreement on containers and take it back to the terminal.

Q I show you what has been marked as General Counsel's Exhibit 18 and ask you if that is a delivery order.

A Yes.

Q All right. Now, what does the delivery order control, what does it mean to you as a motor transport carrier?

A It is instructions to the pier or steamship line to release that cargo to me, the carrier.

Q Now, I show you what has been marked as General Counsel's Exhibit 16 and ask you if you can identify that.

[394] A Yes. It's a bill of lading which is a contract between the shipper and the carrier. This binds the carrier for total responsibility of the cargo that he is handling for this particular shipper until such time he gets it and delivers it to the consignee.

Q All right. Now, do you have equipment interchange agreements with steamship carriers in the Hampton Roads area?

A Yes.

Q Do you have one with U. S. Lines?

A Yes.

Q Do you have one with NYK Lines?

A I believe so, yes.

Q Have you ever had an occasion to personally observe the equipment interchange agreement?

A I have not.

Q What does the equipment interchange agreement provide for, to your knowledge?

A The exchange of equipment. My interpretation would simply be that we would be responsible, and we would check the equipment, the tires, lights and what-have-you, just the container itself or trailer, and we would be responsible.

Q Once this inspection has been made, you indicated that you pull the container to the terminal facility of Hennis, is that correct?

A Yes.

[395] Q Prior to your pulling it away, was the container itself intact?

A Yes.

Q To your knowledge, was the container stripped at the pier by deepsea ILA labor?

A No.

Q Have you had an occasion, upon pulling the container to your facility to strip that container?

A Yes.

Q For what reasons would you strip a full shippers load at your facility?

A Our reasons would be mostly economical, or economics, I'll say.

Q Would you elaborate as to what you mean by economics?

A Yes.

If we should go down to the pier and pull back a 20-foot container that, let's say, has 12,000 pounds on the container, then, of course we certainly are charged per

diem for this. Now, we pull these containers. In other words, the cargo is destined to such points as Chicago, Milwaukee or what-have-you which is seven, eight or nine hundred miles away. The per diem is quite expensive. I think it goes up as high as seventeen fifty a day after a certain element of time.

So, consequently, we will strip this cargo off of the container and put it normally in a 45-foot trailer and [396] consolidate it with twenty or thirty thousand pounds of freight and move it in that way.

Q Has a beneficial owner-consignee of cargo ever told you that you should not or could not strip the container and put the cargo on your own truck?

A No.

Q Now, are you familiar with the Hampton Roads Shipping Association and the International Longshoremen's Association contract?

A I am familiar with the fact that they have a contract.

Q Have you ever read the contract?

A No.

Q Has anybody from any of the shipping lines that you have equipment interchange agreements with told you that you should not strip containers at your facility?

A No.

Q Do you recall when containerization came into the Hampton Roads area?

A I believe '65 or '66.

Q From '65 or '66 to the present date, have you followed the procedure based on your own needs of Hennis Freight to strip a full shippers load at your facility?

A Yes.

Q Has anybody from the International Longshoremen's Association told Hennis Freight that they could not ship a [397] full shippers load at the facility of Hennis?

A Not to my knowledge, no.

* * *

[402] WITNESS ALLIE S. McNEIL

* * *

[416] Q Now, you indicated that you were vice president of D. D. Jones.

A Yes.

Q Will you tell me the type of operation that D. D. Jones is in comparison to Associated, Pilot or Thurston?

A Well, D. D. Jones is a combination. They are a motor carrier. In fact, they are the largest motor carrier in the local area, having some 65 tractors there. In addition to that, they are the largest warehousing and distribution company in the local area, having been in business for some [417] 40 years.

Q How is the warehouse operation different than an operation such as Associated, Houff, or Pilot and Thurston?

A Well, the warehousing operation, as I say, is a distribution company. We are set up mainly to handle distribution of cargo; and, of course, about 60 percent of that is related to the import cargo which comes across the piers.

And the operation we perform for a shipper is different because we will bring cargo that a shipper so designates to our facility and we will perform any services. We actually unload the cargo, we store, we might break it down and repack it, we prepare documents for shipping. We are a distribution firm, in that sense of the word, as far as the warehousing operation is concerned.

Of course, that operation was greatly hindered by the contract itself, not on any control of our own but beyond our control.

Q First of all, let's talk about when did containerization, to your knowledge, come into the Hampton Roads area?

A Well, containers have been in existence—It really became prevalent about 1965; but there were containers in the area prior to that.

Q But when did they first become prevalent?

A About 1965.

[418] Q Now, talking only as to the warehouse operations of D. D. Jones, tell me what D. D. Jones did when a full shippers load came into the pier area, keeping in mind that we are talking about bringing it back to the warehouse. What did you do, what were the procedures that you followed?

A Let me ask you what time frame.

Q 1965.

A In the 1965 period, we would pick a container up. We would have instructions or a bill of lading issued to cover that movement from the pier to the warehouse, just like an over-the-road movement or longer distance. You would pick the container up, unload it—take it to our warehouse, unload it and return the empty unit to the steamship line.

Q In 1965 was that type of container going to your warehouse stripped by ILA labor?

A No, it was not.

Q 1965, tell me the procedure that you followed with respect to bringing full shippers loads to your warehouse.

A The full shippers load would move in tact to the warehouse.

Q In 1967?

A The same.

Q Were there any changes in 1968?

A Yes. In 1968, there was—we were advised that there was a new contract that was going to be effective between [419] the steamship industry and the Longshoremen's Association, and that these units no longer would be able to move to the warehouse facilities within these 50-mile radiuses.

Q Now, how did that change and affect the operation procedures of D. D. Jones' picking up a full shippers load at the pier?

A Well, in a container, we could not pick up a full shipper load in a container because they would not release it to us. We had the right to do so and we had the

right to act as the distributor for the shippers, also; but, because of this contract which knowledge of the contract had been passed onto the brokers which in turn had published this to the shippers, although they didn't agree to it, they would not allow—the steamship lines would not turn the containers over to us to come to the warehouse directly.

Q Tell me what D. D. Jones did when you went to the warehouse—or to the pier area starting in 1968 to pick up goods at that time?

A We would send our own trailers to the pier facilities, and our trailers would be loaded and we would dray it back in our own equipment to the warehouse.

Q What did ILA do as opposed to what they did in 1965 through 1967?

A Well, back in 1968 they were stripping the containers on the piers.

[420] Q So deepsea ILA labor would strip the container at the pier; and then, your trucks would pick it up and take it back to the warehouse?

A Yes.

Q Now, how long did that practice remain in tact?

A For about three years or until this CONASA negotiation took place.

Q Are you referring to the Dublin rules?

A Yes.

Q All right. In 1973, the Dublin rules came into effect.

Now, how did that change the warehouse operation of D. D. Jones with respect to picking up loads at the pier area?

A Well, at that time, of course, what they classified as a full shipper load owned by one consignee, it was agreed that it could move to a destination within a 50-mile radius under the sole ownership policy.

Q Now, how did D. D. Jones get affected, did it go to your warehouse?

A Yes. Okay. Under a full shippers load as designated, we could pick that container up, take it to our warehouse and then strip it and then return the empty unit to the steamship line; but there were many restrictions. That was only on one classification of goods. That was just probably a small percentage really of the total traffic.

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[568] WITNESS JOHN M. HAYNES

* * * *

Q (By Mr. Lambos) Captain Haynes, by whom are you employed?

A The New York Shipping Association.

Q How long have you been employed by New York Shipping Association?

A Since June 1, 1958.

Q What is your present position with New York Shipping Association?

A Executive vice president.

* * * *

[584] Q Now, did the New York Shipping Association at that time represent most of the carriers who operated on the North Atlantic Coast?

A They are represented—Well, yes, most of them. We had at that time 145 members.

Q And you are referring to 145 steamship carriers who were members at that time?

A Yes.

Q And, in addition to that, did you have certain associate members?

A Yes, we did.

Q Who were the associate members?

A They were the stevedoring firms, the port watching firms, there was one or two firms that only did checking work. And there were some that did carpentry work. And still are, in fact.

Q Parenthetically, did you attend all of the sessions in the 1959 collective bargaining?

A Yes, I did.

Q Could you tell us whether containerization was one of the major issues in that bargaining?

A Yes, it was.

Q Could you give us some of the background as to how it came—that containerization became an issue in the 1959 [585] collective bargaining?

A Well, it started to be an issue in the fall of 1958 when the ILA stopped a half a dozen of containers up on the North River that were—They said they weren't going to handle them because it was taking work—Actually, it was the gangs. The initial grievance came because the gangs on the ship felt that they were losing work by the use of containers. That's the way it all started, from that.

Q Stop there for a moment. Could you describe it for us how it was that a gang member—that is, one working on a ship's gang—complained that containers were taking away his work opportunity?

A Okay. These six containers were 20-foot containers; and a 20-footer should handle about eight or nine weight tons. Okay. Now, they left that with one draft and put it in the ship instead of eight or nine drafts if it's on pallets. Then, when you lift a box and put it in the ship, it's in stow the minute that you land it; but, if you take it on pallets and put it in ship and then remove it from the pallet and put it to a place of rest in the hold of the ship, then, it takes a lot longer. And the gangs felt they were being deprived of work by the use of these boxes because they had, by this time, started to become noticeable. It wasn't a great big 20 percent of our cargo in containers, then; it was like in the deepsea trade probably about half of one percent or one percent. But it [586] had started to become noticeable.

Q Now, you are talking about the deepsea trade. Was there also an advent of containerization in another trade?

A Yes, in the Puerto Rican trade, which is really the deepsea trade; but I separate it in my own mind, because it was a different run. And that had become containerized, I think, in originally in '57. And there, they were using this one company, the Pan-Atlantic at the time which, subsequently, became Sea-Land. They were using full container ships; that's all they put on is the 35-foot boxes and the 20-foot boxes.

Q Now, Captain, will you tell us what the reaction of Longshoremen in the Port of New York was after the advent of containerization at a point in 1957 with the introduction by the Pan-Atlantic of the first container ship?

A What was their attitude? Well, there wasn't too much of a problem with the Puerto Rican, because they started it in an area where they didn't have too much work. They started it in Newark. And, therefore, it was a new operation to that group of people. The company started business and everybody that they hired was new. It was a job for someone for whom there wasn't that much work in the beginning. Okay. So it meant something to those people. Therefore, that operation got off the ground and got going because it started where it was started, with a group that was depressed.

Q Now, did there also come to be the use of containers here [587] and there on the decks of break bulk ships?

A Yes. In '58 it started—they started handling containers in the overseas routes. They would put them on deck in the squares of the hatches. Mostly, this was Dravo sizes and the 20-footers. They weren't really into the 40-footers yet; but, at that time, it was Dravo, the 20-footers.

A Could you tell us what the reaction of the Longshoremen generally was with respect to that type of container throughout the port?

A Well, you know, in the beginning, like anything else that starts new, it wasn't too critical. As I said, the first grievance that I have any recollection of or that

I can find any record of was the one—I think it was in November of 1958. And this grievance came up because the gangs were complaining about the fact that there were going to be less and less work for gangmen. It didn't seem to matter much to the terminal labor, because they were putting the cargo into the box. The gang was the one complaining, because the cargo was being taken to the pier and put on the ship in one draft instead of ten or twelve drafts.

* * * *

[594] Q More specifically, Captain, what is the rule that has been followed with respect to a container containing the goods of one shipper or one consignee destined to that consignee's place of business either within or without the area which is short-circuited and stripped by trucker's employees at the trucker's platform?

A That's a violation; you can't do that.

* * * *

[601] Q And could you turn to the rules on containers and explain to the Court, if you will, those provisions of the rules on containers which made it a violation for any carrier member of New York Shipping Association to have his container destined either for a point outside the geographic area of 50 miles from the center of the port or destined to a consignee within the port area to have his container stripped at a trucker's terminal?

A Why is it a violation?

Q Yes. What in the agreement makes it a violation?

A Rule 1(a), (b) and (c).

Q Now, could you explain that to the Court, please?

A Well, if a container comes in and it's taken from the pier to a point not its destination and the cargo is removed by other than ILA labor, then, that's a consolidated container and is a violation.

The cargo came to the pier and was picked up by truck and taken to its destination, historically. Okay?

Now, when you take that container off the pier and you stop it and take the cargo out of it and it hasn't gotten to where it's going, then, that's obviously a de-consolidation. What you're doing is taking it out and you are distributing it. Okay?

That's the same as if you had 15 chop marks in there, 15 different consignees in there. It's exactly the same thing. [602] You're distributing them; you are making up a new load.

* * *

[622] Q All right. Another example. What if, instead, I picked up a 20-foot box that I've got to haul through the State of Virginia and I look at the weight limitations that are effective in that state and find that I do not have a sufficient distance between my axles to allow me, under that state's law, to tow that box. What I do is to break the seal—

* * *

Q (By Mr. Auten) So, what I do is strip the box and I take it out of that 20-foot container and, instead, put exactly the same contents and nothing more and nothing less in a container that belongs to me and take it straight to the consignee. Have I violated the rules, then?

A In my judgment, you have.

Q What have I consolidated, sir?

A The weight—When you pick up the container, you are [623] aware of the weight. If the bill of lading said that it was owned by one person and going to that person's warehouse or that person's—not warehouse, but factory in Savannah or whatever place it is. When you picked it up, you knew the weight; and, as a trucker, I'm sure you would be aware of the restrictions. So, at that point, if you couldn't haul it over the road, it should have been stripped on the pier. That would be a violation, in my opinion.

* * *

[645] WITNESS JAMES J. DICKMAN

* * *

Q (By Mr. Lambos) Mr. Dickman, by whom are you employed?

A By the New York Shipping Association.

Q Could you tell us the capacity in which you are employed?

A I am president of the New York Shipping Association.

Q Is the New York Shipping Association a member of CONASA?

A They are.

Q Do you have any connection with CONASA?

A Yes, I'm the president of CONASA.

Q How long have you been the president of CONASA?

A Since June of 1971.

* * *

[700] Q Well, with respect to the public warehouse, is it not a fact that New York, that you allow employees of a public warehouse to strip containers destined to a consignee?

A If it remains in the warehouse over 30 days.

Q What if it doesn't remain in the warehouse for 30 days?

A Well, prior to our dispute in 1974, if it was a matter of inventory taken out and it was a bona fide warehouseman, then, we allowed that cargo to move. But, in most cases, a [701] bona fide warehouseman, his cargo would remain in the warehouse over 30 days.

* * *

[750] Q Well, prior to this '75 date, was it a violation of your warehouse rules if the cargo—if the cargo going to the warehouse was moved within the 30-day period?

A If it was a bona fide warehouseman, it wasn't. The union's contention was that there were people coming up who were not bona fide warehousemen, so they stopped everybody.

Q I know. But that isn't what I'm talking about, now. I'm talking about bona fide warehousemen.

A Could move it, yes.

Q They could move it; and that did not create any violation.

A No.

Q So this 30-day bit just came into effect this year?

A Yes.

* * *

[753] WITNESS THOMAS W. GLEASON, SR.

* * *

Q (By Mr. Gleason) Mr. Gleason, who are you employed by?

A The International Longshoremen's Association.

Q How long have you been employed by them? By the ILA.

A As a union official?

Q Yes.

A Since 1933.

Q What is your present position?

A I'm International President.

Q When did you become president?

A 1963.

* * *

[770] Q Now, prior to '68—prior to the rules being written out, what was the procedure with reference to warehousing in the Port of New York?

A I'm 60 years there; and, as long as I can remember, warehousing on certain commodities has been from time immemorial a part of the transportation business. We had no intention of ever upsetting this. The only ones that we were after were the phony guys or the guys who was going out and getting these customs stations set up and knock the legitimate guy out of business by undercutting his rates and everything else. And they were only doing this, and this freight was being parceled out because of the wages the Longshoremen were getting and

these stump-jumpers or under the hat guys were getting \$2.50 an hour or something like that.

Q Now, when you say bona fide warehouse, what do you mean [771] by a bona fide warehouse?

A A man who is in the regular warehouse business. When you are dealing in the commodity market and the buyers buy at a price and they store it through a warehouse, cocoa, coffee, certain kinds of canned goods and stuff like that. Large shipments of radios probably was bought and put into warehouses and would stay there. And what they would do there is in those warehouses—and I'm talking about the bona fide warehouses now—they would build up a permanent inventory in there. There would be a permanent inventory in there in case they needed any of this merchandise at a particular date, they wouldn't be taken from the fresh stock going in there, and it would be taken out of the permanent inventory.

* * *

[819] Q Now, what was the procedure with reference to the warehousing prior to the 1968 agreement?

A The freight that was to be warehoused would go directly into the warehouse, the bona fide warehouse, and it stayed there for 30 days. This was our agreement with Mr. McAvey at 4:00 o'clock in the morning.

Q That agreement with Mr. McAvey, when did that take place?

A It took place some time in February, I guess of 1969.

Q Fine. So that there was an oral agreement prior to the signing of the 1969 agreement or '68 agreement?

A Right.

Q As far as the warehousing of cargo?

A Right.

Q Now, even though that does not appear in the '69 contract, was that the practice followed throughout the contract?

A That was the custom and practice.

[820] Q Now, was that put into writing by interpretation in the Dublin meeting?

A Right.

Q Now, when you got down to 1974, was the language clear as to the meaning of that warehousing as far as the union was concerned?

A I believe it was.

Q Then, what was the problem, that you had to reopen the contract?

A Because some of the truckers—some of the truckers were getting warehouse licenses and didn't have the space and they were chiseling. They were taking the loads to their place of business and becoming distributors. This was not being warehoused at all.

Q Was there a question as to whether or not it had to remain in the warehouse for 30 days?

A Oh, yes, we always insisted upon them remaining in the warehouse.

Q But was that the reason why?

A That was one of the reasons, right.

Q So that that 30 days was then added to the contract—

A Right.

Q —in the 1975 renegotiations?

A Right.

* * *

[829] WITNESS RICHARD PATRICK HUGHES

* * *

Q (By Mr. Gleason) Mr. Hughes, who are you employed by?

A By the Steamship Trade Association of Baltimore, Inc.—International Longshoremen's Association Container Royalty Fund. I'm the administrator.

Q How long have you been employed there?

A Since 1971.

* * *

[861] Q Did you hear Mr. Dickman's testimony when he testified that it had been considered that when a trucker touched a full shipper's load at his terminal, that it then became a consolidated load?

A Yes, sir.

Q Do you agree with that?

A Yes, sir.

Q Well, was that the interpretation that was made by your container committee?

A My container committee?

[862] Q Yes.

A You mean the committee in Baltimore?

Q Yes.

A Yes, sir, that's their contention. It has been their contention, is their contention.

Q You say that your committee has said that when a trucker touched it, it in all cases then became a consolidated load?

A Well, I can't say that. I can only say that they said that it was a violation for a trucker to unload it. What they related it to, I don't know. I mean, the only thing I can say is that people presented arguments and then they voted.

Q But you didn't go around referring to that load, after the trucker had touched it as a consolidated load, did you?

A No, I referred to it as—that that guy is a distributor.

Q Let me ask you another question. When a trucker, a motor carrier, takes two 20-foot boxes and strips it and puts them into his 45-foot over-the-road trailer is he consolidating in violation of the rules—is he stuffing in violation of the rules?

A Yes, he's becoming a distributor. That's my phrase. He's becoming a distributor of the cargo, which is a violation of the agreement.

* * *

[876] Q Now, after they renegotiated that contract in 1975, were there any changes in the rules on warehousing?

A No.

Q The rules, were they the same as prior to the 1974 agreement?

A Right.

Q Now, with reference to container loads, as manufacturer's label, if a container—if two 20-foot containers coming from Europe, discharged from a ship in the Port of Hampton Roads, was sent to a truckman, picked it up and took it to his place of business and stripped it and placed it in his own truck for delivery outside the 50-mile radius, was that a violation of the contract?

A It certainly was.

* * *

[953] Q When you investigated the container case and discovered that a motor carrier had stripped a container within the designated geographic area, and that that container was destined to a single consignee outside the geographic area, you charged him with a violation, correct?

A Correct.

Q Now, did you ever consider that—Well, let me put a case to you. Let's presume that it was a case in which—Well, first, let me ask you if there has ever been a case like this. Have you had a container case where it appeared to you that the motor carrier stripped a box and simply took the contents of that box without adding to him or subtracting from them and stuck it in his trailer and pulled it to a destination outside 50 miles?

A I wouldn't know that.

Q You would not know that?

A I would not know what he did with the box, after he stripped it.

Q All right. Would you consider it a violation of the rules if he did that?

A Certainly.

PLAINTIFF NO. 20

[SEAL]

UNITED STATES LINES, INC.
Suite 617, 1620 I Street, N.W.
Washington, D.C. 20006 (202) 785-9770

April 11, 1974

Mr. Cletus E. Houff
President
Houff Transfer, Inc.
P.O. Box 91
Weyers Cave, Virginia, 24486

Dear Mr. Houff:

Further to my letter of April 4, I wish to advise that I am now in receipt of a complete report relating to the difficulties you have encountered with your interchange agreement with United States Lines.

We are advised that on the shipment of two 20 foot containers destined for Union Carbide Corp. in Alloy, West Virginia, you elected for operational reasons to strip the containers in Baltimore and reload them into one of your own trailers.

This, of course, is in violation of the rules, and as a result of this action, the United States Lines was fined \$2,000 by the Steamship Trade Association of Baltimore.

Under the circumstances, United States Lines had no recourse but to exclude your company from our Interchange Agreement until such time as you deem it in your best interest to satisfy our request for payment of this fine.

This matter is under the complete jurisdiction of Mr. George Maier, our Port Manager in Baltimore, and should

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you have any further questions, I would recommend you contact him directly.

Very truly yours,

UNITED STATES LINES, INC.

/s/ J. Daniel Smith
J. DANIEL SMITH
Special Ass't to the President

cc: E. Lamma, Walker, Mfg.
G. Maier, USL, Balto.
E. Frey, Balto.
K. Edler, N.Y.

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PLAINTIFF NO. 21

[SEAL]

UNITED STATES LINES, INC.
One Broadway, New York, N.Y. 10004
(212) 344-5800 Cable: Seapost

April 12, 1974

Certified Mail
Return Receipt Requested

Mr. Cletus E. Houff
Houff Transfer, Incorporated
P.O. Box 91
Weyers Cave, Virginia 24486

Dear Mr. Houff:

We received your letter of April 1st, with which you request clarification of your status as carrier handling United States Lines equipment.

I have been advised by our Baltimore office that your Baltimore terminal sometime in mid-February, picked up two 20 ft. containers from our Baltimore terminal and for their own convenience stripped these two boxes in the Baltimore terminal and transferred the loads into your equipment. This activity apparently was observed by the I.L.A. and United States Lines has been obliged to pay to the I.L.A. a fine of \$2,000.

I am sure you are familiar with this case and I don't need to go into every detail. Our Baltimore office has been in touch with your Company but have been advised that Houff Transfer is not inclined to reimburse United States Lines for this fine which was incurred through actions of your personnel.

As a result of this it was decided not to permit your Company to handle our equipment.

The reason for not having advised you officially of cancellation of your Interchange Agreement, is simply that I had hoped that you would have a change of heart and agree to reimburse us for a fine incurred through no fault of ours.

Inasmuch as no further developments have come about, please accept this letter as our ten (10) day notice as per paragraph ten (10) of the Interchange Agreement executed on March 18, 1970 between your Company and United States Lines, Inc. Unless we hear further from you indicating your willingness to settle this matter the above Interchange Agreement shall be null and void as of April 22, 1974.

I regret as to take this action but your attitude has left us no choice.

Very truly yours,

/s/ Klaus W. Edler
KLAUS W. EDLER
Manager,
Interline and Leasing

KWE:cs

cc: Mr. G. Maier✓
Mr. D. Schierloh
Mr. D. Smith
Mr. R. B. Murphy
Mrs. H. Sunhill

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Docket No. 5-CC-925
5-CC-929

IN THE MATTER OF:

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO;
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
ATLANTIC COAST DISTRICT, AFL-CIO;
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
LOCAL 953, AFL-CIO

—and—

THE TERMINAL CORPORATION

Place: Baltimore, Maryland

Date: August 27, 1979
August 28, 1979
August 29, 1979
August 30, 1979

DESIGNATED PORTIONS OF TESTIMONY IN
THE TERMINAL CORPORATION

* * * *

[110] WITNESS WERNER MOMM

* * * *

[111] Q (BY Mr. Holzman) Where do you live, Mr. Momm?

A I live in Germany, representing the German company.

Q What company is that?

A Dolomitwerkes. It is a refractory company in Germany.

Q What is the business of Dolomite?

A We are supplying a special kind of refractory material to this country for steel plants, for the making of specialty steels.

Q Is that also known as fire brick?

A Yes.

Q How long have you worked for this company?

A I am working for this company for the last 7 years.

Q Currently, in what capacity do you work for the company?

A I am the sales manager for the United States.

Q How long have you held that position?

A The last two and a half years.

Q There has been a stipulation that in about May of 1978, your company and Terminal entered into an arrangement.

A Yes.

[112] Q Whereby your company would ship containers of fire brick to Terminal.

A That is correct.

Q Prior to entering into that arrangement with Terminal, how were you handling your United States accounts at that time?

A In more or less the same way, except that we did ship directly to our customers in various parts of this country.

Q Are you talking about containers or break bulk?

A Containers.

Q When you say directly to your customers, could you expand on what you mean by 'directly to your customers.'

A Short of using warehouse facilities we have now an agent here in Baltimore, which is where the Terminal Corporation is.

We just ship the materials through the Port of Baltimore, directly to our customers such as Pittsburgh or New York, New York State.

Q That would be the user of the fire brick?

A Yes.

Q Are you aware if the International Longshoremen's Association ever stripped any of your containers of fire brick in the past?

A Not to my knowledge.

Q Under the arrangements that you have with Terminal, [113] Terminal strips the contents of the containers.

A Yes.

Q And puts it into their warehouse?

A That is right.

Q Who gives the instructions of what is to be done to your goods after that?

A The instructions come either directly from our office, or while I am in the United States, I, in many cases, handle this directly from my location here in United States.

Q Those instructions would consist of what?

A The instructions are to ship certain quantities, certain types to our customers in this country.

Q The facilities that you have with Terminal, is that to fill current orders, or to warehouse—What type of arrangement do you have?

A To fill current orders. There is a necessity, in order to be able to supply our customers more quickly with the material, rather than shipping directly, what would require more time. So in order to have material here, we

decided that the warehouse would be essential for our conduct of business in this country.

Q When the material arrives at Terminal, is it already sold to be shipped out, or is part of it just to be maintained for backlog?

A I would say part of it is sold already before it comes in, and part of it, of course, to have a certain margin [114] of supplies. We have to ship more than we immediately need, but most of it I would say goes directly on very short time after receipt to the customer.

Q What type of time are we talking about?

A In the last year it has been so that we have already waited for the material to come in, and every day, every minute did hurt us because the material was needed.

Q Is it the rule or exception that it stays more or less than 30 days in the warehouse?

* * *

THE WITNESS: Yes, of course, our calculations are such we would probably ship it as quickly as possible because keeping the material costs us money.

Q (BY Mr. Holzman) Using 30 days as a storage criteria that I am talking about?

A I would say it would be less.

* * *

[118] Q (BY Mr. Eisenstadt) Mr. Momm, your problem seems to be focused on satisfying the customer's needs?

A Yes, definitely.

Q So therefore when you put the bricks into the warehouse you are able to more finitely give the customer exactly what he needs at a particular time. Is that right?

A Yes.

Q In order to accomplish this, of course, you have to take the bricks out of the container first. Is that correct?

A Yes.

Q They don't leave the container in the warehouse. They take the bricks out of the containers.

A That is right.

Q But to take those bricks out of the containers, I suppose you need hi-low equipment. Is that right?

A I would say so.

Q What is the process of taking the bricks out of the container?

A I don't know what kind of equipment Terminal is using, in particular. Yes, you do need automated or some kind of mechanical equipment to remove the pallets, yes.

Q When the containers are loaded in Germany, how do they load the containers?

A I would say the same way you unload them here, by [119] having the mechanical equipment to load them.

Q To take it out?

A Put them in Germany, yes, and—

Q Does Terminal have any particularly unusual equipment that is used for this type—

A I wouldn't call it unusual equipment.

Q Nothing unusual.

A What is unusual?

Q Well, do they use a forklift, some special computerized synchronized type of equipment?

MR. HOLZMAN: We will stipulate nothing unusual.

Q (BY Mr. Eisenstadt) Nothing unusual. So, in other words when you take the bricks out of the container it could be done outside of this courthouse, isn't that correct?

A No. Especially not in this kind of weather, because the bricks are very sensitive to moisture.

Q But if I brought it over to a shed and I took the bricks out and put them into a covered truck—whether it is covered by canvass or covered by just the truck's own configuration, that could be done also any place I wanted to wherever I let go of the container.

A I wouldn't say that, sir, because our bricks are also—even though of course they are bricks, they are quite brittle and any handling by people who are not familiar

with that type of brick, I think they could do a lot of damage.

[120] Q How long ago did the Terminal Corporation employ employees who are specially familiar with your type of bricks?

A I wouldn't say that they were familiar with our bricks. I am only saying that it is important—not just anybody can take bricks out and handle them like anything.

* * *

Q (BY Mr. Eisenstadt) When you take containers over the road, let's say from the pier to a warehouse, do you need any special types of springs? Do these containers have some special types of devices that stop the bricks from shaking?

A Not to my knowledge, no.

Q I don't really have to take that container over the road. [121] I can even put it in a truck and take it over the road, isn't that right?

A Again, I would say that would mean extra handling and we have found that extra handling would increase our breakage.

Q You know already—let's say five containers come in from Germany and you know that a certain amount of this brick inside of these containers, you know that they are going to Customer X, is that right?

A Yes.

Q And a certain amount of this type and that type and another type of brick are going to go to Customer Y. Is that right?

A Yes.

Q Why can't that be done down at the pier. Why can't they take those bricks out and send it to customers—

A No.

* * *

[122] Q (BY Mr. Eisenstadt) Mr. Momm, how are these bricks loaded? How are they transported inside the container? Are they just one brick on top of another?

Are they on pallets?

A They are on pallets, yes. In cardboard and special moisture-proof packaging, and that, of course, is again why we have to be careful. If you break the packaging, then of course the bricks are exposed to the atmosphere and they will dehydrate and therefore become useless.

Q As far as the bricks that are going to customers with whom you already have orders, can these bricks be removed from the containers arriving in the U.S., in the Port of Baltimore, and sent from the marine terminal—the maritime terminal—to the customer?

A No.

Q It cannot be done?

A No.

Q Why not?

A Because, first of all, that would mean that you have the entire container sent to the customer. Of course, this container may contain a number of different bricks.

[123] Q I think I misunderstood. Let me be more clear. If you have certain bricks in a container—Container No. 1 has certain bricks; Container 2 has certain bricks; Container No. 3 has certain bricks—You know the customer needs five tons from No. 1, two from No. 2, three from No. 3.

A Yes.

Q These can be removed, put together and sent to the customer, can't they?

MR. HOLZMAN: Objection.

MR. EISENSTADT: I am asking the witness whether they can or cannot.

THE WITNESS: You see when you say can or cannot, it is not that simple, you know, because first we have different types of bricks, different qualities, and our customers have difficulties identifying the various kinds of bricks when they get them. They should know because they have used those bricks for two years now, and yet they have difficulty.

So I don't expect anybody here in the Port who is not familiar with those bricks to make any identification.

Q (BY Mr. Eisenstadt) Isn't it a fact that by sending the bricks to Terminal, you are not even giving the people at the pier to know the differences in the bricks?

A They have instructions from us, an explanation of various codes and numbers.

[124] Q Cannot those be given to Longshoremen?

A Like I said, if the steel companies cannot handle that and it is their job, then I don't know whether it is so simple.

Q Do they have any special rapport with Terminal that other people cannot absorb?

A Anybody can learn it, yes.

Q Anybody can learn it.

A Provided he has the know-how and the background, yes, he can.

Q Are you aware of whether longshoremen handle very complex merchandise?

A Yes, but I don't think they know all the things they are handling, sir.

Q Do you know whether or not they have ever mis-handled your bricks?

A Of course—

JUDGE SCHNEIDER: Who is "they?"

MR. EISENSTADT: Longshoremen.

THE WITNESS: I cannot say no, not anything in particular. Of course, like I said, handling itself is very damaging. Period.

* * *

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Docket No. 5-CC-899

IN THE MATTER OF:

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO:
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
DISTRICT COUNCIL, BALTIMORE, MARYLAND:
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
LOCAL 953 and
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
LOCAL 333

—and—

BECK ARABIA, LTD.

Place: Baltimore, Maryland:

Date: September 28, 1978

October 4, 1978

October 5, 1978

**DESIGNATED PORTIONS OF TESTIMONY IN
BECK ARABIA, LTD.**

[—] JOHN THOMAS GREER

* * *

Q You are employed by Beck Arabia?

A Yes, in Dallas.

Q What is your title?

A I am a procurement manager.

Q You said you were located in Dallas, Texas?

A Yes, sir.

Q Does Beck Arabia have an office in Dallas, Texas?

A Yes. We have a branch office in Dallas, Texas.

* * *

[47] Q (BY Mr. Eisenstadt) Let me reiterate the question. Do you know how these containers were obtained—the containers involved in this case?

A Yes. We contacted the shipping line.

Q Which shipping line?

A I think it was Central Gulf in this case.

Q Go on.

A Made arrangements to have containers moved to the Shipperside Packing Company.

Q To have containers moved, you say. Do you know, if at all, whose containers they were?

A No, I do not.

Q So Central Gulf made containers available at the Shipperside premises for stuffing. Is that correct?

A Yes, sir.

Q Mr. Greer, do I understand correctly that the only thing Beck Arabia does in this country—the United States—is to arrange for the purchase of materials for the construction of various commercial and other facilities in Saudi Arabia?

A In addition we coordinate engineering requirements with the architect, if the architect is located in the United States.

* * *

[50] Q As far as operations from Dallas, under your regime, have you ever had any goods moved through the Port of Baltimore that were processed by other than Shipperside?

A To my knowledge, no.

MR. EISENSTADT: Thank you.

JUDGE BARBAN: Mr. Greer, I have one question. The carrier, Gulf—

THE WITNESS: Central Gulf.

JUDGE BARBAN: Do any Beck Arabia employees, or yourself, play any part in what Gulf does with its containers—how it gets them, Shipperside or anyone else?

THE WITNESS: No, we just give them a schedule of when we need them.

JUDGE BARBAN: That was my reason for asking. You give them, in effect, instructions as to what you would like them to do.

THE WITNESS: The size and when we need them, yes.

JUDGE BARBAN: You then assume that they do what you instruct them to do. Is that the idea?

THE WITNESS: Yes, sir.

* * *

SUPREME COURT OF THE UNITED STATES

No. 84-861

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
AFL-CIO, ET AL.

ORDER ALLOWING CERTIORARI

Filed January 21, 1985

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted.

Justice Powell took no part in the consideration or decision of this petition.